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MEMORANDA

OF

FOUR CLAIMS AGAINST MEXICO

WHICH WERE

SUBMITTED TO THE LATE BOARD,

AND

REJECTED.

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CLAIMS AGAINST MEXICO.

COMPLAINT having been made to Congress, by nearly all persons whose claims were either awarded or rejected by the late BOARD OF COMMISSIONERS ON CLAIMS AGAINST MEXICO, of injustice done them by said Board, it has been deemed advisable to exhibit, from the official records of the Board, the grounds of rejection adopted in a few cases, in which a rehearing was had on argument calculated to correct errors of fact, errors of principles, and errors of law, set forth in their decisions; which, nevertheless, the Board refused to correct, and made absolute, as the annexed official documents will establish. They are printed for convenient reading by the Members of Congress, and more particularly by the SELECT COMMITTEE OF THE SENATE charged with inquiry into the proceedings of said Board; and given in this naked form without comment, that the reader may from them alone make his own unbiassed conclusion on their merits.

The persons interested in these CLAIMS have petitioned Congress that a new Board be authorized to review and reaudit the cases herein mentioned, and so, also, all other cases acted on by the Board, in order that the injustice done them by said Board may be corrected.

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SCHOONER REBECCA:

NATHAN EELLS, MASTER; JAMES W. ZACHARIE, CLAIMANT.

STATEMENT OF THE CASE.

The schooner Rebecca, with a lawful cargo of goods, sailed on the 4th of April, 1822, from New Orleans, on a trading voyage to Mexico. The property was owned by the claimant, James W. Zacharie; though at the time he had a partner in business with him, named Samuel H. Turner. The concern became embarrassed in consequence of this and other heavy losses, and thereupon closed up the concern, Mr. Zacharie agreeing to pay all the debts from private means; and in consideration thereof, all the assets and claims were assigned to him; and, having paid the debts, became the sole owner of all the effects, and he is the only person who now has, or since the time of said agreement has had, any interest in this claim.

The schooner touched, by permission of the authorities there, at old Tampico, then called Pueblo Viejo, and landed a part or all of the cargo. Some articles to a small amount were sold; the articles not sold were reshipped, and the vessel regularly cleared for a further voyage. All the necessary papers for the purpose were obtained from the Mexican custom-house for that purpose, and she left the port, but was detained at the bar. While there, the judge, military commander, and collector, conceived the plan of appropriating the property to themselves; and, under the pretence that they had information which excited a suspicion that it was intended to smuggle the cargo into Mexico, they seized her and her cargo, and by an armed force took them back to Tampico.

In consequence of this illegal and outrageous proceeding, the claimant lost not only the cargo, but the vessel, and now presents his claim for compensation.

The facts in this case are not numerous or complicated; and it is not apprehended that the Board will hesitate in coming to the conclusion that the claim is just and well sustained by the evidence.

The vessel and cargo, for which compensation is now sought, were owned by Messrs. Zacharie & Turner, merchants of New Orleans, and were sent out to Mexico in 1822, and seized by the Mexican authorities at or near Tampico.

Vigorous efforts were made at the time to get possession of the property, and, after its sale, of the avails, but they were unsuccessful. An agent was sent to the city of Mexico, at considerable expense, to prevail on the central Government to interpose, as it was supposed they would in a case of such manifest wrong; but when he arrived there he was advised that the necessities of the Government were so great and pressing, that it would direct the money to be paid into the treasury of

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the General Government—and if once there, all attempts to recover it would be unavailing; and that it would be better to seek redress of the local authorities at Tampico, though they had committed the wrong. This advice resulted no doubt from the fact, which the history of that date has recorded, that a civil war then raged in Mexico, in which the Emperor Iturbide was opposed by several leading Generals with large bodies of troops; that battles had been fought; and, in the end, the Emperor was overthrown and exiled, and a total change of government, both in form and in functionaries, resulted.

It appears by the deposition of Jose Perez, a witness of well-sustained character for veracity, that the collector and judge offered, through him, to decree an acquittal of both vessel and cargo for one-half the avails of the sale; but, conscious that there was no pretence for the seizure, and that, without outraging all law and justice, there could be no sentence of condemnation, this offer was rejected, and judicial proceedings in the case urged forward.

The vessel and cargo were sold; not, however, in pursuance of any sentence or decree of condemnation, but by consent of the parties, to save the schooner from destruction by the worms, and the cargo from pillage while in the custody of the Mexican officials; and the avails went into the hands of the judge. He, however, delayed proceedings until he became involved in a charge of high treason, was arrested, made his escape, and ran away; taking not only the money avails of the sale with him, but, as is supposed, all the official documents relating to the case. This event, and the revolutionary condition of the country, discouraged the claimant. After spending a considerable sum of money, and seeing no prospect of recovering the property, the claimant appears to have intermitted his efforts for some time to procure the redress of his wrongs.

The principle is too well established to render it necessary to refer to authorities, that the owner of property seized as prize in war, or for violating revenue laws, is not divested of his right to it by the capture or seizure, nor until there has been a decree of condemnation. Even in a case where there was just cause, the seizors cannot escape from liability to him for the property, without showing a regular decree of condemnation. It is not sufficient for them to show that there is cause for confiscation; they must show a decree of a court of competent jurisdiction, declaring its forfeiture.

This position—that capture or seizure does not divest the owner of his right to the property—has been established, and the authorities in support of it referred to in another case now pending before the Board, (the case of the Escambia.) It is not deemed necessary here to repeat the argument, or to refer again to the cases which support it; they will be found in the printed case, (the Escambia,) at pages 25 and 26. The undersigned will repeat the reference to only two or three cases:

"The property of a neutral is not divested by capture and sale by 'a belligerent, unless condemned as prize by a competent court."—1 *Johnson, N. Y. Reports*, 471, *Wheelwright* vs. *Depeyster; same point decided in* 2 *Peters Ad. Decisions*, 345.

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"The property of the original owner is not changed by capture, 'without condemnation."—1 *Cranch*, 32.

The case under consideration is as strong as any that can be conceived for the owner of the property. Though there was a seizure, no cause for it is shown, and no decree of condemnation ever pronounced.

It is true that there was a pretext set up for the seizure, and its character is well worthy of the particular attention of the Board.

In the protest made by the captain, mate, and sailors, at the time of the transaction, it appears that the pretence alleged for preventing them from sailing, after permission and the necessary papers were granted, was, that information had been received "that his [the captain's] object in going to sea was to smuggle." There was no allegation that any law had been violated, any offence committed, but merely that a violation of law was intended. Under this pretence, the collector and military commander took forcible possession of the vessel and its valuable cargo, with all the papers on board. Though assured by the consignee, (D'Arbel,) a highly respectable merchant, and by the supercargo and the captain, that the accusation was entirely false, they persisted in holding on to the property, and rejected D'Arbel's offer to bond for the vessel and cargo. The names of the accusers were demanded, but these officers refused to give any information to justify their conduct.

The property was sold in presence of the judge (Ortiz) on the 14th of May, 1822, and by his order; (see Doc. No. 8.) The cause of seizure is stated in the heading of that paper. It was sold, not because it had been condemned, but "*for account of those to whom it might 'belong, the cargo of the schooner Rebecca, Captain Eells, which was 'seized on suspicion of an intention of smuggling.*"

It was not, then, pretended that there was any proof of an intention of smuggling; but there was only a suspicion of an intention to commit an offence against the revenue laws of Mexico—not a suspicion, (it will be observed,) that an offence had been committed, but a suspicion of an intention to commit such offence.

Jose Perez, a witness who is presented under circumstances which entitle him to the utmost credibility, knew the grounds of the seizure. He says in his deposition (Doc. No. 17) that "*she was seized by the 'captain of the port, on the alleged [vague and unfounded] suspicion 'of intention to fraudulently land the cargo*, and sent back to port in 'charge of an armed force; that said D'Arbel remonstrated against 'said violent proceedings, and gave the most positive assurance of the 'innocence of intention of the officers and all persons, including him-'self, who were in any manner connected with the vessel and cargo, 'but without effect."

D'Arbel, it will be recollected, was the consignee and commercial correspondent of the owner of the vessel and cargo, and a respectable merchant. To quiet their pretended apprehensions, he offered to give bonds that the apprehended offence of smuggling should not be committed. But all this effected nothing towards releasing the property.

"It was then manifest," (as Perez states,) "from the beginning, that 'the whole suspicion of fraudulent intention before mentioned was but

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'a pretext for the plunder then resolved on and afterwards consum-
'mated."

Considering the grounds on which the seizure was placed, it cannot be a matter of surprise that the collector and judge should offer to compromise by taking one-half the sum for which the property had been sold, or that the supercargo should decline to accept it. Nor is it less surprising that no trace of any judicial proceedings in the case can be found. The documents which are presented to the Board show that great diligence has been made by the claimant, and considerable expense incurred, to find any trace of judicial proceedings in the case, but all in vain. If any such proceedings were instituted, the judge, when he absconded, did not see fit to leave them behind him.

There is nothing in the case, as the undersigned conceives, to justify the assumption that the seizors ever dared to go on to judgment. No record can be found of any such judgment, or of any initiatory proceedings in any court, not even before the absconding judge. That there was no judicial sentence in the case is not only proved by no record being found where it would be if one existed, but by the testimony of Jose Perez, now a respectable citizen of New Orleans, and certified "*to be worthy of full belief.*" He was, at the time of the seizure of the Rebecca and her cargo, the clerk of Don Domingo D'Arbel, the commercial correspondent of the owner. He states that, after the supercargo, acting under the advice of D'Arbel, refused to buy an acquittal by giving up one-half of the cargo, and urged on the trial, in full confidence of success in the result, the judge procrastinated the proceedings, but at length fixed on a day of trial in December: but before that day arrived he was arrested on a charge of treason; and, while on his way to the city of Mexico, escaped from custody, fled to the shores of the Pacific, and there died.

The undersigned has not been able to conceive any substantial ground of opposition to this claim.

That the vessel and cargo were not confiscated most conclusively appears; and it is equally clear that no law subjecting them to confiscation was violated.

That the forcible seizure of the Mexican authorities at Tampico was done in bad faith, and without any fair pretext, is placed beyond a reasonable doubt.

There was nothing in the voyage itself, or the conduct of it, to excite the suspicion which the Mexican officers affected to entertain. At the time it was undertaken, our trade with Mexico was considerable, but it afterwards declined in consequence of the plunder to which it was subjected. It was the usual course for vessels with large cargoes to visit the several ports in the Gulf of Mexico. It appears, by a certificate from the custom-house at New Orleans, that the clearance of the Rebecca was for Vera Cruz, but the original bill of lading, which is annexed to the deposition of James W. Zacharie, the claimant in this case, (see document No. 5 B,) that her destination was Tampico and Vera Cruz. Her visit to Tampico affords no ground whatever for suspicion. The bill of lading shows that she intended to do so, for the purpose of trying that market. It also appears that she had permis-

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sion to land and sell a part of the cargo at that place. Her proposed departure from that place afforded no cause for suspicion. She had received from the custom-house the usual and regular papers for that purpose. The supercargo had a clear right to seek a better market if he thought he could find one; and no objection to his course was made or intimated until he had left the port of Tampico. Being delayed at the bar in getting to sea, the idea of plundering the property seems first to have sprung up in the minds of the judge and military commandant of that place. The groundlessness of their pretence has been commented on and exposed; and nothing now remains to be considered but the amount of damages which resulted from the lawless and outrageous conduct of the Mexican officials.

All which is respectfully submitted.

JAMES H. CAUSTEN.

Endorsed "Statement of the Case Schooner Rebecca, filed January 20, 1851. James H. Causten."

BOARD OF COMMISSIONERS ON CLAIMS AGAINST MEXICO,
March 21, 1851.

THE CLAIM OF JAMES W. ZACHARIE.

This claim is for the value of the schooner Rebecca and cargo, alleged to have been lost at Puebla Viejo by the illegal proceedings of the judge of that place.

The statement of the case as set forth in the memorial is not established by the papers and evidence introduced to sustain it. From these latter it appears that said schooner, with a cargo valued at New Orleans at $7,676, being the joint property of Zacharie & Turner, set sail about the 4th April, 1822, bound for Tampico and Vera Cruz. That in due time she arrived at Puebla Viejo, and entered her cargo. Selling, by permission, a small portion to defray expenses, she cleared with the residue to return to New Orleans. Before the vessel crossed the bar of Tampico, she was seized by the custom-house officers of that port, charged with fraud, and proceedings were commenced against vessel and cargo before the judge at Puebla Viejo.

The supercargo, consignee, and captain, thinking it would be best for the interest of the owners, agreed that the vessel and cargo should be sold, and the proceeds deposited in court, subject to a final sentence or decree. The decision of the case for some reason or other was put off and protracted until, in the end, the judge having been accused of treason, made his escape, taking with him, as is alleged, all the money deposited and all the records of the case.

Can the party claim against the Government of Mexico under these circumstances?

Without going fully into the question how far by the public law (by which this case must be governed) a nation is liable for the misconduct of its judicial officers, the Board proceeds to consider this claim as presented by the testimony and papers offered as testimony.

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It not only does not appear that the Mexican Government had the slightest agency in causing or suffering the wrong complained of to be done to the claimant, but, on the contrary, it appears that all knowledge of the wrong was sedulously kept by the agents of the parties interested from the knowledge of that Government.

By the letter of one H. Didier, written in December, 1822, it is shown that he was some short time previous at the city of Mexico, and presented the case to Mr. Wilcox, the United States consul residing there; and the latter had a private conversation about the matter with one of the Secretaries. The result of this was, that it would be better not to bring the matter to the notice of the Mexican Government, or the proceeds of the sale of the vessel and cargo would be ordered to be paid into the national treasury. On the contrary, the parties were advised to make the best arrangement they could with the judge before whom the case was brought.

The end of this conference with the consul was communicated to the consignee and supercargo by Mr. Didier, and the former proceeded to act under the advice given; and Messrs. Zacharie & Turner, the writer says, would be informed by the consignee of the result of the intended arrangement with the judge. The same letter also shows that an account of the transaction was given to the owners by the supercargo; and this account was forwarded to them with the letter of Didier. None of this correspondence of the supercargo or of the consignee has been furnished to the Board.

The next step taken by the claimant in this matter appears to have been a search for the record of the trial at Puebla Viejo, about the commencement of the year 1844. This search seems to have resulted in nothing save the finding an entry on the custom-house register at that place, showing the arrival of the vessel, the entry of her cargo, and a sale of part by permission, and her exportation of the remainder, said to be intended for New Orleans. This record states that, after the vessel had thus cleared, "subsequently fraud was discovered, and the vessel and cargo were confiscated." This effort to find the record was followed in 1845 by a representation of the case to the United States State Department. Thus it appears that a claim arising upon an alleged gross and illegal act was kept entirely out of the view of the Mexican Government by the claimant, and no notice of it brought to the knowledge of his own Government for upwards of twenty-two years. Upon what grounds can Mexico be held responsible for this fraud or misconduct on the part of one of her judges? It seems to us that if liability for all acts of its judicial officers should attach to the nation, it can only be on the ground that the Government receives the benefit of or sanctions such acts. In the case before us, neither of these probabilities arise. Before judgment, no part of the money accruing from the sale of claimant's property can be presumed to have gone into the national treasury; and since, by consent of the claimant, the Government of Mexico remained unadvised of the act of the judge, no presumption can properly arise that the Government sanctioned his act.

The charge of fraud against the vessel, judging from the statements of the agents of the claimant, was not wholly without foundation. The vessel is said to have cleared at New Orleans for Vera Cruz. We find

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her entering at Puebla Viejo, through the harbor of Tampico.[*] Upon the ground (as is alleged) that the cargo would not sell at a profit there, the cargo is reshipped, and the vessel cleared for New Orleans. That the reason given for the reshipment of the cargo and the clearance of the vessel for New Orleans was a mere pretence, to cover some other design, is very apparent from the statement of the account of sales of vessel and cargo at Puebla Viejo. The latter cost in New Orleans $7,676, and sold at Puebla Viejo, as stated, for $23,883.20—more than three times the original cost.

Upon a full consideration of the whole case, the Board is of opinion and decides that the claim is not valid against Mexico, and the same is accordingly not allowed.

GEORGE EVANS,
CALEB B. SMITH,
ROBERT T. PAINE,
} *Commissioners.*

REMARKS ON THE OPINION OF THE BOARD IN THE CASE OF THE SCHOONER REBECCA.

This vessel, having entered a Mexican port and sold a part of her cargo, then cleared at the custom-house at Tampico for New Orleans; but before she crossed the bar was seized by the custom-house officers, charged with fraud, and proceedings were commenced against both the vessel and cargo before the judge at Pueblo Viejo.

While under seizure, and proceedings for condemnation going on, the supercargo, consignee, and captain, agreed to the sale of the vessel and cargo, and the proceeds were deposited in court. The sale was made by the Mexican authorities; and it distinctly appears that the motive of the claimant's agents for consenting to the sale was to prevent the destruction of the vessel and deterioration of the property. If the vessel had remained only for a short time in the waters where she then was, she would have been destroyed by the worms, and, if ultimately released from the seizure, would have been worthless.

The avails of the sale were deposited in the court, and the judge, having the money in possession, protracted the proceedings, but did not decide the case, and was afterwards accused of treason, and ran away with it.

The Board ask the question, "Can the party claim against the Gov-

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[* Note.—There appears an obscurity in this sentence, which, as it charges the vessel with fraud, is too essential to be overlooked. It may be elucidated by adding after the word "Tampico" the following words: *where she had no right to go, because she had not cleared out at New Orleans for that port.* The decision in this case was drawn up by Colonel Paine, who pertinaciously insisted, (and the other members of the Board concurred,) in all cases, that our vessel had no right to enter any foreign port for which she had not cleared out on departing from the United States. Doubtless such was the idea intended to be conveyed in this obscure passage; and it is manifest from the context that the Board charged the vessel with fraud on that absurd ground, and based their adverse decision in part or the whole thereon. By referring to the Board's decision in the case of the schooner Susan, it will be seen that this point is fully set out, and, by the argument thereon, fully answered. See pages — and — .]

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ernment under these circumstances?" Though the question is not followed by a direct answer, the counsel understand the Board do answer that *he cannot;* the result shows that they do answer in the negative.*

It is important to the claimant that there should be no doubt hereafter as to the Board's answer to this question; and as a favor the counsel ask that this may be made more explicit than it appears to be in their written decision; though the inference is clear, that they answer the question in the negative, yet a more direct and explicit answer is very much desired.

There is not, nor can there be, any other question in the case, inasmuch as the Board do not pretend that there ever was any decree of condemnation.

There must be such a decree to divest the owners of the right of property, and to transfer it to the seizors:

"The property of a neutral is not divested by capture and sale by 'a belligerent, unless condemned as prize by a competent court."—1 *Johnson*, 471, *Wheelwright* vs. *Depeyster*, *Supreme Court New York*, *S. P.* 1806; *Peters' Adm. Decisions* 2d, 345, *District Court Pennsylvania*, 1804.

"The property of the original owner is not changed by capture with-'out condemnation."—1 *Cranch*, 32, *Talmon* vs. *Seaman*.

"Whoever sets up a title to property under a decree of condemna-'tion, is bound to show that the court has jurisdiction of the cause, and 'that the decree of the court has been rightfully pronounced upon the 'application of parties competent to ask it."—*La Nereyda*, 8 *Wheaton*, 108.

The fact that they did not follow up their seizure by a decree of condemnation sustains a legal inference that there was no sufficient cause for the seizure; and the inquiry whether there was or was not sufficient cause for the confiscation of the property is superseded by the fact that there was no sentence of condemnation.

If it was not a matter aside from the case, it would certainly be easy to show that the facts sustain the legal inference of no good cause for condemnation. As it was a work of supererogation it was not much pressed in the former argument, and is only alluded to here.

In another respect, it is presumed, the Board will desire to alter the language of their decision. The Board say: "It does not appear 'that the Mexican Government had the *slightest agency* in causing or 'suffering the wrong complained of to be done to the claimant; but, on 'the contrary, it appears that all knowledge of the wrong was sedu-'lously kept by the agents of the parties from the knowledge of that 'Government."

This assertion has excited considerable surprise. It must have originated from some very strange and inaccurate notion of what the Government is. It is not a pure abstraction; but, so far as it acts or is acted on, it is, and can be nothing else than, its official men. Their acts are the acts of the Government, their knowledge is the knowledge

* Col. Paine has suggested that this paragraph seems to be disrespectful to the board; I most explicitly disavow any such intention.

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of the Government. It can act in no other way nor have any other knowledge. In this view of its functionaries, (and there can be no other,) how can the above-quoted assertion of the Board be correct? The custom-house officers and the judges of courts are as much a part of the Government as the Secretary of Foreign Relations, or of the Treasury, or any other officer of the Government; their acts, in their appropriate sphere, and their knowledge of official transactions, are the acts and the knowledge of the Government, and involve the Government in responsibilities.

How, then, can it be said that an act done by the Government is not known to the Government? The custom-house officers and the judge, being in fact a constituent part of the Government, inflicted the injury; and though other public functionaries might not have been immediately cognizant of the wrong, it cannot in correctness be said that the Government had no agency in, or knowledge of, the wrong.

If there was nothing but the bare acts of the functionaries at Tampico, the attempt to set aside the claim in this case, upon the alleged ground of no agency or knowledge of the Government, would be sustaining a defence—not a good one—by a fallacious mode of argument.

The above assertion is in still stronger conflict with the facts of the case, for it clearly appears, in the very decision from which that assertion is extracted, that H. Didier, the agent of the owners, immediately after the transaction went to the city of Mexico and presented the case to Mr. Wilcox, the consul general of the United States, who laid the case before one of the Secretaries, took his advice, and it was followed. With this fact not only proved, but distinctly incorporated in the decision of the Board, it is said, in that very decision, that the Government "had not the slightest agency in causing or suffering the wrong," and "that all knowledge of the wrong was sedulously kept, by the agents of the parties interested, from the knowledge of that Government."

The Government was one of the parties in interest, and by her officials (and it could act in no other way) did the wrong; and yet it is said the Government had not the slightest agency in it. It could have no knowledge but the knowledge of her officials, and they knew all about the transaction, for they were the actors.

The complaint was carried by the injured party to the city of Mexico, and laid before one of the principal Secretaries of the Executive department of the Government; and yet it is said, strange as it may appear, that all knowledge of it was sedulously kept from the Government. And on this ground of no agency of the Government in acts done by its officers in their official character, and of no knowledge of a transaction which was at great pains and expense actually and promptly laid before one of the Secretaries of the Executive branch of the Government, through the agency of the United States consul general, the claim to indemnity for the loss of a valuable vessel and cargo is rejected.

The counsel will submit, if he must, to such a decision; but he cannot bring his mind to acquiesce in its justice.

All which is respectfully submitted to the honorable Board on claims against Mexico.

JAMES H. CAUSTEN.

WASHINGTON, *March* 28, 1851.

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BOARD OF COMMISSIONERS ON CLAIMS AGAINST MEXICO,
April 15, 1851.

ON REVIEW OF THE CLAIM OF JAMES W. ZACHARIE FOR LOSS OF THE SCHR. REBECCA AND CARGO.

From the argument of counsel, in support of the motion to review, it appears that the meaning of the Board, in the former decision, was not understood. Technical objections are taken to several expressions used in the first opinion. We are asked to define what we mean by the term Government; and, in referring to a "query" put in the opinion, the Board is gravely required to answer it unequivocally.

The tone of argument would not be considered altogether respectful, were it not that the counsel has denied in the margin all intention of a want of courtesy. The Board, in its former opinion, stated that the memorial was not sustained by the proofs, and that opinion is here reiterated. The case as made out by the testimony, if it proves anything, shows that the judge before whom proceedings were probably instituted against the vessel and cargo, committed a fraud, not only against the claimant, but also against the laws of his country; and that the agents of the claimant not only did not make known this fraud to the chief political authorities of Mexico, but consented to withhold the knowledge of it from such authorities, and proceeded to make the best arrangement they could about the matter with the judge. The claimant was advised in 1822 of all these proceedings, and was also advised that he would, in a very short time, be informed of the result of such arrangement. After the lapse of twenty-two years, during which period the matter appears to have been suffered to slumber, the claimant writes to his former consignee and agent, to know if he can find any record of the proceedings against the vessel. None could be found, and he then proceeds, in 1845, to obtain testimony to make up a case. It is not a little strange, if the claim possessed any merit, that the deposition of the consignee, to whom the arrangement with the judge had been confided, was not taken; and it is equally strange that none of the correspondence with the supercargo, who, it appears, wrote in 1822, or with the captain or consignee, at the date of the event, is produced. These persons are now dead, and it is alleged their testimony cannot be had; but this does not remove the necessity of producing something explanatory of the arrangement which was had with the judge. It is not necessary that the Board should express any other opinion of these omissions than to say that it is shown to its satisfaction that the claimant ought not to recover, and they therefore adhere to their former opinion disallowing the claim.

GEO. EVANS,
CALEB B. SMITH,
ROBERT T. PAINE,
} *Commissioners.*

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SCHOONER SCOTT:

CASIMER PRIETO, MASTER; JAS. W. ZACHARIE, CLAIMANT.

STATEMENT OF THE CASE.

The schooner Scott cleared at New Orleans on the 20th day of December 1824, with a valuable cargo of lawful goods, bound for Vera Cruz; and while upon the voyage, and when near that port, to wit, on the 4th of January, 1825, was forced near the Castle of San Juan d'Ulloa, and compelled, from the state of the wind and sea and the contiguity of the land, to come to anchor between the City of Vera Cruz and said Castle, within short range of the batteries of the city; that immediately thereafter, without being boarded, warned, questioned, hailed, or notified in any manner of any interruption in the trade to said port, the said city batteries opened their rapid and heavy fire upon the vessel, which soon stripped her of her masts and rigging, and so many of the gun shots struck in her hull as to cause her to fill rapidly with water; whereupon, to save the lives of the officers and crew, it became indispensably necessary, and in the midst of the firing, to run the vessel on shore; and in the attempt to do so, the vessel sunk, but the firing continued long thereafter. During its continuance, the officers and crew of the vessel, aided by some soldiers and laborers from the Castle who came to their relief, after great labor and exposure to the firing, from which some of the people were seriously injured, succeeded in saving from the wreck a small part of the cargo, chiefly much damaged, the residue being destroyed by the gun shots passing through the body of the vessel from side to side, and also by the salt water in which it was immersed and had to remain for some days, by which most of it was entirely destroyed. After the firing had ceased, which had extended to more than twenty-four hours, the vessel was raised by the master, crew, and laborers, at great expense, and repaired sufficiently to reach New Orleans, where she was still further repaired. The saved and damaged portion of the cargo was sold at the Castle.

This case is marked with wanton barbarity, and resulted no doubt from an idle suspicion that the intention was to trade with the Castle—a suspicion that could have been easily determined by the slightest inquiry, which the authorities of the city had the convenient means to make effectual at the first moment, viz: by hailing the vessel; and as she was completely under the range of their guns, as the destructive use of them fully proves, so no possible act done or contemplated by the vessel would in any degree justify the violent outrage practiced on her. It was a naked, unprovoked, and violent wrong of the most aggravated character, and so gross and palpable as to render its turpitude self-evident.

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There are two circumstances in this case, which, when brought to view, will require but little further:

1st. The vessel's clearance, manifest, invoice, bills of lading, and all the other papers, clearly show the voyage was intended for Vera Cruz; and the character of the cargo is a full confirmation of that fact—the principal part of the cargo was made up of "*Platillas*," being fine white costly German linens, particularly suited for the trade and use of the people of the city of Vera Cruz, but wholly unsuited to the use of soldiers and others at the Castle. The residue of the cargo was comparatively trifling in amount, and probably equally well suited to either place.

2d. The supplementary decree of blockade, of Dec. 20, 1824, was enacted only on the *very day* on which this vessel cleared and sailed from New Orleans, and the proof shows that she was not warned off; hence, she could not by possibility have had knowledge of its existence. But the mere necessity of enacting this supplementary decree clearly shows that the prior paper blockade decree of October 8, 1823, had ceased to operate; it had been either tacitly withdrawn, or gone into disuse, or so relaxed in practice as to require a new enactment to give it vitality.

And in setting out this reviving or supplementary decree, the cause that produced it is disclosed on its face, to wit: that a great change had taken place, by which Mexico was encouraged to look with confidence for success in her war with Spain. It runs thus:

"Inasmuch as the nation finds itself happily in a state to sustain the 'independence which the glory of its arms obtained over those of the 'Spanish Government, making war until its formal acknowledgment, as 'is authorized by the common right and customs received by all the 'civilized countries of the globe—I command that, promoting and 'protecting the means of prosecuting it, the strict blockade of the 'Castle of San Juan d'Ulloa is continued, as already declared on the '8th of October of the last year, [1823,] having effect from beginning to 'end, upon the terms made known in that declaration."

It thus appears that the decree of October 8, 1823, was inoperative when the vessel sailed on her voyage from New Orleans; and that the *ex post facto* supplementary decree of December 20, 1824, could not, and did not, revive it as against this vessel, since she had not even knowledge of its existence; and it conclusively follows, that there was no prohibitory law of Mexico against our trade to the Castle, if, contrary to the fact, this vessel did intend to trade there. She was forcibly prevented from entering Vera Cruz, and compelled to sell the saved fragments of her cargo at the Castle for a trifle.

Having violated no law whatever, the naked wrong stands out in glowing turpitude, and gives the sufferer a clear right to the indemnity he seeks.

The case of this vessel presents for the consideration of the Board the same questions in relation to the doctrine of blockade, that were raised and considered on the argument in the case of the Susan. The undersigned flatters himself that it was shown in that argument, that the Castle never was in fact blockaded by an investing maritime force, and that it was therefore as open at all times, while held by the Spaniards, to neutral commerce, as any port in Mexico. No principle of the

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law of nations is better established than that which allows neutral nations to trade freely with either belligerent, unless it be in articles contraband of war, or to a port or place in the state of actual blockade.

The proclamation of a blockade, unless there be in fact an actual sufficient blockading force stationed in the vicinity, is a mere nullity; neutral nations are not required to regard it, and are not injured in their right by it.

It is not deemed necessary in this case to reconsider the positions laid down in the case of the Susan, but merely invite the attention of the Board to the positions taken, principles invoked, and facts established, in that case, because they fully apply to this also.

It will be assumed as well established, that the decree of the Supreme Government of Mexico of the 8th of October, 1823, was a mere *paper* blockade, and never had any validity in regard to neutral commerce with the Castle of San Juan d'Ulloa—a Spanish possession—because there was no investment of the place by an actual force. If in point of fact it could be shown that there was, at the time of the emanation of the decree, an investing force, it had been subsequently withdrawn, or *relaxed;* and that fact alone would open the place to neutral commerce.

The issuing of the supplemental decree of December 20, 1824, (document No. 15,) which was itself no less a *paper* blockade, proves that the previous decree had not been enforced, and the latter decree was intended to revive the former one which had become extinct.

The deposition of Juan J. Presas proves that the former decree had not been enforced; but that after it was promulgated, intercourse between the Castle and the city of Vera Cruz had been again established.

The same fact is also proved by the letter from the American Consul, (commercial agent,) of the 5th of January, 1825, [No. 17 B,] to the Secretary of State, in which he states:

"Hostilities have again *commenced*, between San Juan d'Ulloa and 'Vera Cruz, and *originated* as follows," &c.; and he adds: "The 'firing continued about twenty-four hours."

The firing alluded to by him is believed to be that which was opened upon the schooner Scott, which he says both *commenced* and *terminated* with that occasion, although it is certain that each party was within the range of the guns of the other.

As the Castle drew its supplies from Vera Cruz, the commander would of course abstain from provoking its inhabitants to active hostilities as far as practicable, and thus produce a relaxation of blockade; since, on the other hand, the Castle could effectually blockade and cut off all commerce most completely with Vera Cruz; and this mutuality of accommodation was in fact a relaxation of the blockade. On no other reasonable ground can the cessation of hostilities between the Castle and City be accounted for. It is seen, by No. 17 A, that shortly before the Scott arrived off Vera Cruz, another vessel, the brig James and Mary, of Philadelphia, from Gibraltar, also bound to Vera Cruz, put into Alvarado for advice, being under the apprehension that *Vera Cruz* was blockaded by the Spaniards, but had no supposition so unreasonable as that the reverse was the case, viz: that the Castle *was blockaded by the city of Vera Cruz.* No one could pretend, however, that the James and Mary had not a right to go to Vera Cruz; but, in

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a spirit of cupidity, they decoyed her by delay and treachery, until they fitted out a vessel of war, expressly to capture her, which they accomplished, and brought her in "as a prize, on suspicion of having Spanish property on board," which was not true; so that, blockade or no blockade, an American vessel could not escape from the cupidity of the merciless Mexican authorities.

The supplemental decree of blockade, though dated the 14th of December, at the city of Mexico, was not known at Vera Cruz until the 20th of that month, which was the very day the Scott sailed from New Orleans.

As a decree it was a nullity, so far as it was designed to affect neutral commerce with the Castle, because there was no investment of the Castle by an actual force. It could not affect the claim in this case, even if there had been an actual blockade; because the Scott sailed on her voyage before she had, or could have had, any knowledge of it.

Whether, therefore, her destination was to the Castle or the city of Vera Cruz, her voyage was a legal voyage; whether she went to the Castle or to Vera Cruz, she went to a place where she had a perfect right to go, and neither belligerent had, in the condition of things that then existed, a right to interfere with her for trading with the other; nor could she be rightfully injured for doing so.

War had, in fact, though not by definitive articles of peace, ceased between Mexico and Spain; but if it had been in a state of rigorous prosecution, any neutral nation had a clear right to trade with the other under the limitations before mentioned.

As the Scott had not articles contraband of war on board, and was not bound to a port or place in a state of actual blockade, she had a right to trade with either belligerent, without incurring any penalty, or exposing herself to any injury from either.

She had unquestionable right to trade with the Castle, a Spanish possession, as with Vera Cruz, a Mexican possession, so long as neither of them were in a state of actual blockade. The Castle, as has been satisfactorily shown, was no more blockaded than Vera Cruz. There was, in truth, no blockading force stationed about either. Under these circumstances, suppose the Castle had opened its guns on a neutral ship in the harbor of Vera Cruz, and destroyed her, would not such an act have furnished just grounds for reclamation? By what right or under what law could Spain have resisted such a claim? There could be no other ground for resisting it, but the broad one that neutral nations have no right to trade with belligerents. Such a position no one will attempt to maintain. She could not justify the outrage upon the ground that the neutral ship was in *delicto* by trading at a blockaded port, for Vera Cruz was not blockaded.

The case under consideration differs no way from the case supposed, except the parties are reversed. By not putting the Castle in a state of actual blockade, Mexico left it open to neutral trade; she had no right to injure a neutral carrying on that trade, because it was clearly legal by the law of nations.

It is the duty of a neutral power to protect in its harbor the public armed vessels of one belligerent against the attacks of the other. In the well-known case of the British squadron's attack upon the American

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privateer General Armstrong in the harbor of Fayal, the Portuguese Government have ever been held liable for the loss of that privateer. Our Government has always considered this a well-founded claim against that of Portugal, (see Senate document, 1st session 29th Congress, No. 349,) and the latter Government has only resisted it on the ground of inability to prevent the injury. Is not this case stronger, where a neutral vessel, pursuing a permitted and legal trade, enters the harbor of one belligerent, and is destroyed by the other belligerent? That trade could only be interrupted by a blockade, unless it was a trade in articles contraband of war. The manifest of the cargo shows that there was not on board the Scott a single article of that description.

The view taken of the claim in this case renders it quite immaterial to inquire into the intention of the claimant as to the place of trading. Considering the nature of the cargo and the proofs in the case, the inference is strong that the Scott was fitted out for Vera Cruz; and her going into the vicinity of the Castle, and afterwards trading with it, was accidental in the first instance, and then forced to it by the violent acts of Mexico herself. Shall she now be permitted to plead her own wrong to justify the consequences flowing from it? The vessel had an equal right to traffic with either of them; there was no blockade, and no articles contraband of war were found on board.

The situation of the castle made the harbor of Vera Cruz to some extent common to both powers. If the schooner is to be regarded in that part of the harbor exclusively belonging to Mexico, (as was clearly the case, since she was under the range of her guns,) then Mexico was bound to protect her, and had adequate means at hand to do so. To that end it was not necessary to fire a single gun; and the outrage is the more flagrant by not only withholding due protection, but inflicting the wrong. But considering the vessel in that part of the harbor over which the Castle could properly claim sole or concurrent control, which is the view most favorable to Mexico, she ought to have been safe against the attack from the Mexican batteries, for she was where by the law of nations she had a right to be; she was in a trade which that law permits to neutral vessels.

Could it be supposed that the Board would give any effect to a paper blockade, still the claim would stand on substantial grounds.

The decree of October 8, 1823, if it had ever any force, (and it has been shown that it could not,) had ceased. This the Mexican Government admits by the promulgation of that of the 14th December, 1824, which was confessedly designed to revive the former one. This latter decree was not known in Vera Cruz until the 20th of December, and that was the very day on which the Scott left the port of New Orleans. She not only did not, but could not, have had any knowledge of this paper blockade.

Among the documents in this case (No. 12) is the original letter from Captain Prieto to the United States Consul at Alvarado, written on the 6th of January, 1825, only two days after the attack on the schooner. In that letter the Captain states, (the letter was written at the Castle:)

"When I sailed from New Orleans I knew not that this Castle was

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'in a state of blockade, and I was not boarded during the passage by 'any Mexican cruiser to advise me of the existence thereof, if any such 'does exist. It is, besides, a notorious fact, that until the present 'period American vessels have had free communication with this Castle, 'and the trade has always been considered legal; consequently I can-'not conceive why my vessel has been treated by the Government of 'Vera Cruz worse than an enemy, for the forts of that town did not 'fire upon the Castle, a declared foe, but wreaked their whole vengeance 'upon a defenceless pilot boat, bearing the flag of a friendly nation."

It cannot be drawn in question that the vessel sailed without any knowledge of even the paper blockade of the Castle. It is proved beyond all controversy.

The voyage was lawful in its inception. No notice on the voyage was given of the pretended blockade; it was, therefore, lawfully pursued; and the vessel came to anchor near the Castle without being warned off, or receiving the slightest notice even of the decree of the 14th December; it was, therefore, lawfully ended. From beginning to end, all was fair and innocent on the part of the vessel. She had run no blockade, because, in fact, there was none to run. She had visited the Castle without any knowledge of even an intention on the part of Mexico to interrupt neutral trade. She had done no illegal act. She had respected all belligerent rights. Her object was legal, and all her conduct in prosecuting it was innocent. On no conceivable ground could Mexico object to her course. The attack upon her by the Mexican batteries was in every conceivable view unjustifiable, unless the vessel was *in delicto*, by having on board articles contraband of war, or violating an actual blockade; and on neither of these grounds could she be inculpated.

The policy of Spain, in excluding her southern possessions from the world of commerce, found them, at the date of their independence, in a state of comparative inexperience with respect to the operation and effect of international laws and usages, such as govern and bind nations. That inexperience led Mexico into the error, (which, indeed, is not confined to her,) that a declaration of war carries with it authority to seize, capture, and condemn, indiscriminately; and she has acted under that untenable assumption. On this point the following corrective seems to be proper:

"It may be considered as the opinion of all who have written on the 'jura belli, that war gives the right to confiscate, but does not itself 'confiscate the property of the enemy. * * * That the declara-'tion of war has only the effect of placing the two nations in a state of 'hostility, of producing a state of war, of giving those rights which war 'confers; but not of operating by its own force any of those results '(such as a transfer of property) which are usually produced by ulterior 'measures of Government. * * * If, therefore, enemy's property 'had come into the ports of the United States after the war [had com-'menced,] and the President had declined to issue letters of marque 'and reprisal, there was no act of Congress which, in terms, declared 'it confiscated, and subjected it to condemnation. If, nevertheless, it 'was confiscable, the right of confiscation resulted not from the ex-'press provisions of any statute, but from the very state of war, which

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'subjects the hostile property to the disposal of the Government. But 'until the title should have been divested by some overt act of the 'Government and some judicial sentence, the property would unques- 'tionably remain in the enemy owner; and if a peace had intervened, 'it would have been completely beyond the reach of subsequent con- 'demnation. There was, then, no distinction recognised by any act of 'Congress between enemy's property which was within the ports of the 'United States at the commencement of the war [with Great Britain, 'of 1812,] and enemy's property found elsewhere. Neither were de- 'clared *ipso facto* confiscated, and both were merely confiscable."—*Wheaton on Captures, ed. of* 1815, pp. 20–24; *8th Cranch*, 60.

If enemies' property is thus entitled to protection and security, even by a belligerent, in a state of actual war, with how much more reason is the property of an innocent neutral entitled to at least an equal protection?

The fact of an existing war between Mexico and Spain did not therefore confer on Mexico any right to assail the vessel in question.

Another supposed error into which Mexico appears to have fallen is, that a neutral vessel, having cleared out for one port with intention to trade at a different port, thereby subjects herself not only to suspicion, (which appears to be all-sufficient for her purpose of capture and confiscation in many cases,) but to conviction of intended wrong. On that point a single authority need be cited:

"It is well known that, although it is the ordinary form of clearing 'out from a belligerent country to bear an ostensible destination to a 'neutral port, yet no one imputes that as a fraud; nor is it considered 'as such an act as would justly subject neutral property on board neu- 'tral ships to be molested on that account," &c.—*Rob. Ad. Rep., vol. 2, p.* 88.

The undersigned considers an apology due to the Board for offering either argument or authority to show the innocence of our vessels clearing out for one port and going to another port, since it has been almost the daily practice, from all our principal seaports, from the origin of our Government.

Another evident error into which Mexico appears to have fallen is with regard to the principles of blockade—even five years after the passage of the decree of October, 1823. In 1828 Mr. Poinsett negotiated a treaty with Mexico. In the discussions leading thereto, the following protocol took place and was recorded. (See Senate Doc. 2, 25th Cong., No. 351, p. 195.)

"*Protocol of a conference held between J. R. Poinsett, Esq., and his Excellency Don Sebastian Camacho, on the 1st of March*, 1828.

[Extract.]

"His Excellency Don Sebastian Camacho observed, that as doubts 'had occurred to his Government on the interpretation of some of the 'articles of the treaty of amity, navigation, and commerce, between the 'United States of America and the United Mexican States, signed on 'the 12th day of February, [1828,] he had sought this conference in 'order to their being explained and elucidated.

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"The first was, the meaning attached to the concluding paragraph 'of the 19th article, in which it is declared '*that such places only are 'blockaded which are actually blockaded by a belligerent force capable 'of preventing the entry of the neutral;*' because, in the relative 'maritime strength of the two contracting parties, Mexico might block-'ade a Spanish port with two or three frigates, and the Government of 'the United States of America might break through that blockade by a 'superior force.

"Mr. Poinsett replied, that such an act would be considered hostile, 'and clearly was not meant by the spirit or the words of the 19th 'article. The principal object of inserting that article was to prevent 'a practice which had prevailed in Europe, of declaring a port, or even 'a long line of coast, in a state of blockade, and of capturing vessels 'bound thither, although the belligerent should not have an adequate 'force before such port, or along such line of coast, to maintain a 'blockade. It was then agreed by both parties, that the meaning of 'the article should be understood to require a sufficient force to keep 'off neutral merchant vessels, and by no means to authorize the forcing 'of the blockade by vessels of war.

"His Excellency Don Sebastian Camacho said that this article 'offered another difficulty. A blockading squadron might be driven off 'by stress of weather; and it would be unjust in such a case that a 'neutral should be allowed to avail itself of such temporary discontin-'uance of the blockade.

"Mr. Poinsett replied, that where the blockade was by notification, 'and the neutral vessel had sailed from the port knowing of the exist-'ence of such blockade, the temporary discontinuance of the blockade 'from accidental causes, if it did not amount to an interruption or 'breaking up of the blockade, would not protect the neutral from cap-'ture and condemnation on leaving the port, or on the place falling 'into the hands of the belligerent; and that the cases wherein such 'protection should be extended to a neutral are recited in the 21st 'article, viz:

"ART. 21. And whereas it frequently happens that vessels sail for a 'port or place belonging to an enemy, without knowing that the same 'is besieged, blockaded, or invested, it is agreed that every vessel so 'situated may be turned away from such port or place, but shall not 'be detained; nor shall any part of her cargo, if not contraband, be 'confiscated, unless, after warning of such blockade or investment from 'the commanding officer of the blockading force, she should again attempt 'to enter the aforesaid port; but she shall be permitted to go to any 'other port or place she may think proper. Nor shall any vessel of 'either of the contracting parties, that may have entered into such port 'before the same was actually besieged, blockaded, or invested, by the 'other, be restrained from quitting such place with her cargo; nor, if 'found therein after the surrender, shall such vessel or her cargo be 'liable to confiscation, but she shall be restored to the owner thereof.

"It was agreed that this explanation should be considered as the 'correct meaning of the ends of the article."

It thus appears that Mexico herself agreed to and confirmed the pre-

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cise doctrine contended for in this case; and she could not complain if there be exacted from her the measure of her own principles.

This appears to have been a flagrant case of outrage, which entitled the claimant to a full indemnity for all actual and consequential loss he may have sustained.

The statement of loss will be found on the next following page, being the same that was filed in the Department of State on the 21st March, 1845, per original No. 10, deeming it most proper that the claim heretofore presented to the Government should now be submitted to the Board.

All which is respectfully submitted to the honorable Board.

JAMES H. CAUSTEN.

WASHINGTON, *February* 8, 1851.

BOARD OF COMMISSIONERS CLAIMS AGAINST MEXICO,
February 14, 1851.

SCHOONER SCOTT—JAMES W. ZACHARIE, CLAIMANT.

This claim is similar, in its essential features, to that growing out of the capture of the schooner Susan, which has already been decided by this Board not to be valid, and must be disposcd of upon the principles which governed the decision of that case.

Upon the application of the counsel for the claimant, the Board has very carefully re-examined the grounds upon which that decision took place, and finds no occasion to reverse the judgment to which it was then conducted.

The injury for which indemnity is sought in the present case was occasioned by the firing of the Mexican batteries, in the harbor of Vera Cruz, upon the schooner, then lying at anchor near the Castle of San Juan de Ulloa.

This occurrence took place in January, 1825, when the Castle was in the possession of some of the military forces of Spain, with which nation Mexico was then waging her war of independence.

Spain had been, before that time, driven from all her possessions in Mexico, except this strong fortress, of which a small body of her troops had retained possession for a period of more than three years, against the most strenuous efforts of Mexico to expel them.

During a portion of that time, very active hostilities were kept up between the Castle and the Mexican batteries and forces on shore, and during other portions there was, to a considerable extent, a cessation of active operations, and some degree of intercourse appears to have been carried on between the Castle and the city.

Peace, however, was by no means concluded between the two countries, and Spain had not relinquished her purpose of attempting the reconquest of Mexico.

During the same year, she made an unsuccessful effort to relieve the Castle, and to invade the Mexican territory. It was not until late in the autumn of that year that the Spanish troops in the fortress,

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having been reduced to the last extremity, were compelled to surrender.

Niles' Register of December 31, 1825, says:

"Gen. Coppinger, late of Florida, commanded at San Juan de Ulloa at the time of its surrender, and certainly held out as long as he could. Cats and rats had been eaten, to prevent starvation; and so reduced was the means of subsistence, that sentinels died at their posts while under arms. More than four-fifths of the garrison perished by the scurvy."

This extract shows with what degree of vigilance and ability Mexico had carried on hostilities against the Castle. Of the means which she employed to effect its reduction, some account is given by Mr. Ward, in his book on Mexico, vol. 2, page 69. On the 11th March, 1825, after an absence of about one year, Mr. Ward returned to Mexico, and says:

"From the moment that we approached the shores of Vera Cruz, an 'astonishing difference became visible in the state and appearance of 'everything around us. The Castle was indeed still held by a Spanish 'garrison, *and the harbor closed in consequence* to foreign vessels, but 'the firing had long ceased; the siege being converted into a blockade, 'in which *a number of Mexican schooners and gun-boats* were em-'ployed, while the Castle was occasionally supplied with fresh provisions 'by the Spanish flotilla from Havana. The island of Sacrificios, where 'we again anchored, and which I had left a year before a barren and 'desolate spot, had been converted *into a regular fortification*, under 'which the Mexican gun-boats sought protection on the approach of 'the Spanish fleet. Mocambo, too, had assumed a formidable appear-'ance," &c.

These were the means which Mexico was then employing, and had been employing, to compel the surrender of the garrison.

Of her purposes she had, as well by these means as by her public declarations, given notice to the world.

A decree was issued on the 8th October, 1823, declaring the Castle of San Juan de Ulloa to be in a state of blockade; and by another decree of 20th December, 1824, it was announced that the strict blockade of the Castle was continued, and all the provisions of the previous decree were declared to be in full force. The works upon Sacrificios and Mocambo, both in the immediate vicinity of the Castle, and designed to aid in its reduction, were erected in 1824; and every indication of a more active effort on the part of Mexico to compel the garrison to surrender appears to have been given.

In such a state of things, the schooner Scott was cleared from New Orleans for Vera Cruz, and sailed on the 20th day of December, 1824.

The claimant insists that she undertook a lawful voyage, and was honestly bound for the Mexican port of Vera Cruz, and not to the Castle of San Juan de Ulloa; and he avers that she was fired upon and sunk by the Mexican batteries, from an "idle suspicion" that she intended to trade with the Castle.

This is a question of fact necessary to be, in the first place, clearly settled.

The Castle of San Juan, it is understood, entirely commands the harbor of Vera Cruz; and foreign vessels could not therefore with safety enter that port. Indeed, it is well known that, owing to the possession

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of the fortress by the Spaniards, and the hostilities between it and the city, Vera Cruz became, in a great degree, deserted, and all the commercial business was transferred to Alvarado.—*Ward's Mexico, 2d vol., pp. 6 and 7.*

But in the opinion of the Board there is very decided proof, not only that it was the intention of the schooner to trade with the Castle, but that the fact of trading had actually commenced, at the time the firing was opened upon her by the Mexican batteries.

The captain of the vessel, upon his return to New Orleans on the 3d day of March, 1825, noted a protest, in which he stated that "he 'had experienced loss and damage on his outward passage by an attack 'on said vessel from the forts of Vera Cruz, soon *after she anchored* 'near *the Castle*, the particulars of which he would make known at 'more leisure." And on the 8th of the same month he appeared with his mate and two of his crew, and extended the protest, of which the following is an extract:

"Nothing material occurred on the outward passage aforesaid, until 'the 4th of January last, when the weather being cloudy, &c., at 3.30 'P. M. saw the Castle of San Juan de Ulloa; at 4.30 P. M., got a 'pilot from that fortress; at 5.20 P. M., came to anchor, &c. Got 'the boat out, and the captain went on shore. At 6.40 the boat re-'turned, and brought off two launches from the Castle for cargo. La-'dened these launches, and sent them ashore, when the fort at Vera 'Cruz fired one shot at the said schooner, which passed without doing 'much damage."

It is thus established beyond all controversy that the vessel was actually engaged in trade with the Castle at the time she was fired upon by the Mexican batteries. Two launches had been loaded from her, and sent to it, before the firing commenced. Nor is there any reason to doubt that the attack, resulting in great injury to vessel and cargo, was induced by this act of trading.

It is urged that the cargo, as exhibited by the manifest, was not suited to the wants of the garrison; and it is hence inferred that the voyage was not in fact undertaken to that fortress.

The proof is too clear to admit of any doubt upon the subject, even if the manifests were entitled to the most implicit confidence.

Besides, it is well known that many cargoes were landed at the Castle, intended to be smuggled into the city in violation of the revenue laws of Mexico. This was especially the case prior to the decree of 8th October before referred to.

Mr. Taylor, the Consul of the United States at Vera Cruz, in a letter to the Department of State under date of April 6, 1828, says: "The fort, too, is turned into a place of deposite or trading house, 'where cargoes are landed, deposited, or sold, and from thence smug-'gled into Vera Cruz."

It being established to the entire satisfaction of the Board that the vessel and cargo, at the time of the injuries complained of, were actually engaged in carrying on trade with the Castle of San Juan de Ulloa, then held by the Spanish arms, the question next to be considered is, whether this was a violation of the belligerent rights of Mexico.

It has been urged very strenuously, on behalf of the claimant, that it was not such violation; that the blockade of the Castle was a mere

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paper blockade, not binding upon neutrals; that Mexico had not sufficient power to enforce it, or to cause it to be respected; that the schooner had never been warned off, without which, it is contended, she was not liable to interruption.

A blockade is understood to be, in strictness of language, applicable only to ports, harbors, or coasts, accessible by sea for commercial purposes. Its object is, to harass the enemy by obstructing or annihilating his commerce, and thus to induce him to conclude a treaty of peace. It does not contemplate a surrender of the port or place blockaded, and is not to be regarded as a mere military operation.

"There is an important distinction," says Duer on Insurance, vol. 1, p. 657, "between a maritime blockade and a military siege. The sole 'object of the blockade is, to distress the enemy by the suspension of 'his commerce. It does not generally look to the surrender or reduc-'tion of the blockaded port, nor does it imply the commission of any 'hostilities which the inhabitants are necessarily required to repel. 'On the other hand, the object of the military siege is to reduce the 'place, whether by capitulation or otherwise, into the possession of the 'besieging power."

There can be little doubt that the purpose of Mexico, in its operations against the Castle, whether by sea or land, was to effect its reduction. It was a military fortress, and not a commercial port. The suspension of its commerce or trade, if it had any, was in no way calculated to injure Spain, or to induce her to enter into a treaty of peace. The object of Mexico was to wrest from her enemy a strong and commanding military post, the possession of which enabled her to prolong the contest, and afforded facilities for renewed attempts at invasion and subjugation.

Mexico had the unquestionable right to effect this important object in any mode she deemed suitable, conforming only to the law of nations and the usages of modern warfare.

She had the right to exclude all intercourse or communication whatever with the Castle.

The mode adopted appears to have been taken upon deliberation; and that it was entirely successful, has been already shown by the extracts from Niles' Register before given.

The following extract from "Poinsett's Notes on Mexico," p. 23, shows the purpose and the mode of accomplishing it which Mexico had in view, if further proof upon that subject be necessary.

Mr. Poinsett, on his way to the city of Mexico, was in Vera Cruz in October, 1822; and giving an account of an interview he had with General Santa Anna, then Governor of the city, says:

"The Governor took me aside to talk of his plans for taking the 'Castle. He proposes to blockade it by water, to construct a battery 'on each extremity of the harbor to prevent the entrance of shipping, 'and to have—I don't know how many—mortars arranged behind the 'city, to shower shells into the Castle."

These plans appear to have been carried into execution. The decree of 8th October, 1823, was promulgated, and the Castle was eventually compelled to surrender.

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In the opinion of the Board, the principles of law applicable to merely commercial blockades do not apply to a state of things like this.

The entire operation against the fortress must be regarded as a military one, having in view and adapted to effect the reduction of a strong military post.

It is said that there is no proof in the case showing that Mexico had the power to enforce the blockade. It might be sufficient to say that there is no proof to the contrary. But the argument seems to assume that the Board are confined to the proofs which are presented by the claimant himself.

It must be recollected that the proceedings before the Commission are altogether *ex parte*. No adversary party is present, or has opportunity to be heard.

If the Board were to be confined to the claimant's own proof, it would be quite easy to sustain any claim whatever.

Indeed, it is urged in the case of the Susan, that when a capture is proved, a sufficient claim is made out, unless it be shown by Mexico that there is justifiable ground for it; and not only so, but that Mexico must go still further, and show a regular condemnation by a court of competent jurisdiction; and the rules of evidence applicable to trials at common law between individuals are cited to establish these positions.

The Board does not yield to this argument. Each claimant must establish every fact essential to the support of his claim. If the ground of reclamation be that a capture or a condemnation was unwarrantable, that must be established.

There can be no such distinction here as exists in trials between individuals of a *prima facie* case, sufficient to put the adversary on his defence, for the reason that there is no adversary. Neither Mexico, nor the United States, who has assumed the obligations of Mexico, has the opportunity of repelling the proofs submitted by claimants, except so far as public documents furnished from the archives of the Government may be regarded as affording such testimony.

The Board does not, therefore, consider itself as limited to the papers which the claimants deem it for their interest to present to its consideration.

Public events, facts or occurrences of general notoriety, published accounts, and documentary records, are all suitable and proper to be weighed as evidence in their bearing upon particular cases.

Judging from the evidence furnished by these and similar sources, the Board is far from coming to the conclusion that Mexico was so deficient of means to enforce her decree of blockade, that it was not obligatory upon neutrals.

The harbor and the access to the Castle was entirely commanded by the land batteries, while the gun-boats and schooners-of-war before spoken of were sufficient to capture all commercial vessels hovering in the vicinity.

These efforts and preparations on the part of Mexico must have been notorious to all persons trading in that quarter; and whoever undertook a voyage to the Castle, must be held to have entered upon it with full knowledge of all the hazards to which it was exposed.

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Indeed, there is evidence before the Board, filed in another case by the present claimant, tending to show that the existence of the blockade was so well known in New Orleans, as to be guarded against by insurers in policies upon vessels bound to Vera Cruz.

An opinion given by the Supreme Court of Louisiana, in May, 1837, in a suit upon a policy of insurance on the schooner Constitution and her cargo, is among the papers filed by the present claimant in that case. The court say: "This action is brought on two policies of insur-'ance, one on the schooner Constitution, and the other on her cargo, 'from the port of New Orleans to Vera Cruz. Both vessel and goods 'are warranted to be American, and *that the former shall not force* '*the blockade.*"

The Constitution sailed upon the voyage in June, 1824, and was soon after captured, upon the allegation that she was bound for the Castle.

This capture, and the grounds upon which it was made, must have been known at New Orleans.

The blockade spoken of in the policy could be no other than the blockade, so called, of the Castle; and when it was known that vessels were actually seized and captured on pretence that they were bound for the Castle, there is little ground for the argument that it was incumbent on Mexico to warn off vessels thus actually employed, before she could lawfully interrupt them.

In the argument addressed to the Board for a re-examination of the case of the Susan, it is said that the Board had fallen into error in supposing that it had been admitted that the vessel had ever been condemned; and if so, that it was by a prize court of competent jurisdiction.

The memorial by itself does not, it is true, make that distinct admission; but the letter of Messrs. Taylor, Sicard, & Co., of 9th January, 1825, to the claimant, says, speaking of the Susan: "Vessel and 'cargo condemned and sold—a very summary process. We are igno-'rant of *all other facts*, save that of her capture and *condemnation.*"

When, therefore, the memorialist asserts that "it is understood" vessel and cargo were condemned, and files a letter from his correspondents containing the statement above quoted, the Board did not suppose it would be going too far to consider that fact as admitted.

But it is further urged, that if condemned, it was not done by a court of competent jurisdiction, and that the proceedings were not regular. And it is urged that Mexico, at that time, had no established courts competent to adjudge upon questions of prize.

The Board does not find any sufficient proof of these allegations.

The letter of Messrs. Taylor & Co., before referred to, says: "Our 'W. T. has just been notified of the condemnation of the McDonough's 'cargo, by the *marine tribunal of the place*, from which decision he 'appeals to the Supreme Court at Mexico."

There is no intimation that this was not a regular proceeding, and a court of competent jurisdiction.

It appears also, in the case of the Constitution, that proceedings were commenced and prosecuted before the same or a similar tribunal, from whose decision an appeal was also taken; and that these defences were set up and conducted by Mr. Taylor, the Consul of the United States at Alvarado.

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The house with which Mr. Taylor was connected were the correspondents of the claimant, and communicated to him intelligence of the capture of the Susan.

Is it reasonable to suppose that Mr. Zacharie did not reply to that letter? That he did not apply for and obtain information of all the circumstances connected with the occurrences? That if there had been no regular proceedings, no condemnation, no proper court, he would not have been fully informed of it?

Did all correspondence between the claimant and his commercial friends, in reference to this matter, cease with that first communication?

It is wholly impossible to admit any such inference.

Since the organization of this Board, it is true, the claimant has endeavored to obtain from Mexico the records of the proceedings in the case, and they have not been furnished.

But is the Board thence to infer that there was no Court and no proceedings? These occurrences took place twenty-six years ago; and since that time, Mexico has undergone many revolutions, and suffered much civil commotion. Is it unreasonable to suppose that her omission to furnish documents called for may be owing to a much more excusable cause than has been attributed to her? That her archives and records may have been rifled and destroyed, in some of the many scenes of violence and anarchy through which she has passed?

If the injuries now complained of had in fact been sustained in the manner now stated, and without any justifiable cause on the part of Mexico, it is impossible to account for the long neglect of the claimant to seek the interposition of his own Government, or to take any steps for obtaining redress.

These claims were not presented to the Joint Commission under the Convention of 1839, nor does it appear that they were ever in any way brought to the notice of the Government of Mexico. Mexico, therefore, has never had the opportunity of answering the allegations, or repelling the proofs upon which they rest; nor were they brought to the notice of the Government of the United States until 1845.

The motive for presenting them at that time was probably that they might be in a condition to be presented to a new Commission, if one should be provided for, with similar provisions to that of 1839.

The claimant, it is true, addressed a letter to Mr. Livingston, then a member of Congress, in January, 1825, upon the subject, but it does not appear that it was ever communicated to the Government, or made the ground of reclamation against Mexico.

The Consul of the United States, Mr. Taylor, also wrote the letter before referred to, stating the fact that the Scott had been fired upon by the Mexican batteries; but he only alludes to it as being the occasion of the renewal of hostilities between the city and the Castle, and not as an aggression upon the right of neutrals, or an act unwarranted by the circumstances of the case.

Is it reasonable to suppose that, if the wrongs complained of had been inflicted in the wanton manner stated, the claimant would have been so long silent? That the Consul, of whose zeal in behalf of American interests there the Board has many proofs, would not have exerted himself with his usual energy?

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Is it not rather more reasonable to conclude that, through his correspondents there, who had every motive to defend his rights, he was fully informed of all that had taken place, and was assured that there was no ground upon which a reclamation through his own Government could be sustained?

The claimant assigns reasons why these claims were not presented to the Joint Commision; but, in the opinion of the Board, they are quite insufficient to impair the very strong presumptions growing out of his total omission to take any measures for obtaining redress, at the time of the occurrences complained of, and for so long a period afterwards.

Exception is also taken, in the case of the Susan, to the conclusion which the Board came to, that she was taken "*near the Castle*," and the assertion is reiterated, that she was captured at sea.

It appears by the protest of the master, that the vessel was first sent into the "port of Sacrificios," which was nothing more than a place of shelter for the Mexican gun-boats, under the batteries there erected.

If taken at sea, it is by no means probable she would have been sent there, but directly to Alvarado, where she was finally taken.

The Consul, Mr. Taylor, states, in the letter referred to in the former opinion of the Board, that she was taken "*off the Castle*," a phrase which implies that she was in its immediate vicinity.

Without further extending this opinion, or enlarging upon other topics presented in the arguments of counsel, the Board is constrained to adhere to the decision already made in the case of the Susan, and to decide, that the claim set forth in the memorial of J. W. Zacharie, for injuries to the schooner Scott and cargo, is not valid, and the same accordingly is not allowed.

GEO. EVANS,
CALEB B. SMITH,
ROBERT T. PAINE,
} *Commissioners.*

WASHINGTON, *January* 28, 1851.

GENTLEMEN: I have filed for trial, claims for the schooner Rebecca and cargo; the schooner Constitution and cargo; and now file herewith the claim for the schooner Susan and cargo—in all of which the question of blockade is in some degree involved; and other cases of like character will also be submitted for your decision.

But as only one of them, the Susan, *sailed directly for the blockaded place*, and the argument on the subject of blockade is in that case directly and elaborately set forth, therefore I respectfully suggest that the convenience of the Board would be greatly facilitated by making that one (the Susan) a pioneer case to the others, in their examinations.

I am, with great respect, your obedient servant,

JAMES H. CAUSTEN.

To the Hon. the BOARD ON CLAIMS AGAINST MEXICO.

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SCHOONER SUSAN:

JAS. NEWMAN, MASTER; JAS. W. ZACHARIE, CLAIMANT.

STATEMENT OF THE CASE.

The schooner Susan sailed from Baltimore on the 10th of November, 1824, cleared for the Gulf of Mexico, having on board a lawful cargo of wines and provisions.

While on the voyage out, she encountered severe weather, which forced her to put into the port of Havana for shelter and repair; and after a short delay there, without reducing or augmenting her cargo, she resumed the voyage; and in the prosecution thereof—to wit, on the 20th of December, 1824—she was captured at sea (without any warning or notice of any blockade) by the Mexican national schooner of war "Anahuac," and sent by the captors as prize into Sacrificios; and, on reaching that port, the captain, supercargo, and crew, (with the exception of one seaman,) were removed from the Susan, and confined on board a Mexican gun-boat.

On the 3d of January, 1825, the captors carried the Susan to Alvarado, where she was forthwith, on the same day, condemned, (*pro forma*, as supposed,) and sold by "a very summary process," founded on and "charged with the intention of being bound to the Castle;" as is fully set out in an original letter from Taylor, Sicard, & Co., of January 9, 1825, now filed with the proof in the case, as No. 10. After this condemnation and sale, the captain, supercargo, and crew, having extricated themselves from the gun-boat where they had been confined, sailed thence in a boat in pursuit of the Susan to Alvarado, where they arrived on the 8th of January, and found their just expectations of having the vessel and cargo restored to them wholly frustrated by said summary condemnation and sale, and that no effort they could make would avail them towards obtaining possession of the property; and it was then and therefore abandoned under protest.

Long continued, very extraordinary and unwearied efforts have been made, not only since the organization of the present honorable Board, but for several years prior thereto, to obtain from the Mexican Government and from the United States consul in Mexican ports evidence of whatever proceedings were had in the case, if indeed any record thereof was ever made, or the papers preserved that were found on board the vessel; but without the least effect. And such failure was anticipated from the beginning, inasmuch as it is seen that, by document No. 16, filed among the proof, Mexico had not at that time created any tribunal competent to decide in a prize cause, nor any depositary for the safe-keeping of papers found on board captured vessels, or proceedings relating to them; nor even enacted any law authorizing such capture.

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Under these circumstances, neither capture, condemnation, or sale, could be legally made. And without a condemnation made by a competent court, there can be no change of proprietary interest in the property of either vessel or cargo. [See cases referred to in the claim for schooner Constitution.]

This vessel cleared at Baltimore for the Gulf of Mexico, and, it is not denied, with the intention of trading with the Castle of San Juan de Ulloa, if, when arriving in the Gulf, it was ascertained that it could be legally done, and that a better market could be there found than in any of the Mexican ports.

By injury and stress of weather she was obliged to touch at the Havana; but while she remained there, which was but a few days, she neither discharged any part of her cargo, or received other articles on board. The good faith of her visit to the Havana was not questioned, nor made the ground of any charge or proceedings against her.

While afterwards pursuing her voyage, she was captured in the Gulf and at sea by the sloop of war "Anahuac," a public armed Mexican vessel; taken first to the island of Sacrificios, and then to Alvarado, and there, as is supposed, condemned for violating the decree of the Supreme Government of the 8th October, 1823, which had been held as interdicting all trade with the Castle of Ulloa.

Every effort has been made to get the proceedings of those who condemned or sold the property, but nothing of the kind can be found. It is highly probable that no record exists, and that there was no organized court of competent jurisdiction to pronounce sentence of any kind in such a case. And even if there had been a competent court there, it would have been wholly useless to the claimant; since without notice to defend himself, or any opportunity so to do, and his property already sold and beyond recovery, it would have been no court to him, and a sentence by it, under such circumstances, would have no title to respect.

The documents show that the proceedings against the Susan and cargo (of whatever character they may have been, or by whomsoever conducted) took place in January, 1825. General Victoria, who was installed as President on the first of that month, declares that there was not then, and probably there had not been for some time previously, any judicial authority in the Government. He says:

"'The federal judiciary not existing, and the Government being precluded from the intervention which it formerly had in that of the ancient provinces, its action, in this respect, has been almost null, and will be so until the Supreme Court be instituted by a law designating the number and local relations of the district and circuit judges, and prescribing rules for territorial tribunals and the federal district.'"

It is believed that the claim for the schooner Susan and her cargo is sustained upon this ground: that they were not regularly condemned by a court of competent jurisdiction.

The unsuccessful efforts to find any record of condemnation warrants the assumption of the fact that there is not, and never was, any legal decree against the property. Had, however, a decree in due form of law by a competent tribunal been produced, there are other sufficient grounds for reclamation in this case, and the undersigned will proceed to state them to the Board.

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The condemnation (assuming, as it will be assumed, for the sake of the argument on other points, that there was one) must have been made under or in pursuance of the decree of the 8th October, 1823, (document No. 11.) That decree will therefore be brought under particular consideration.

As a law of Mexico, it must be regarded only as a municipal law, and can only operate within its jurisdiction. Mexico cannot make laws to abridge the rights of neutral commerce. This is so obvious a principle, that the undersigned will perhaps need an apology for referring to a single authority to sustain it. In the case of "the Appollon," (9 Wheaton, 370) it is decided—

"That the municipal laws of a nation do not extend their operation 'beyond its own territory, except as regards its own citizens."

This decree of Mexico could not be used in any way to the detriment of the owner of the Susan and cargo, who is an American citizen, unless they were at the time of seizure by the Mexican sloop of war within the territorial jurisdiction of the Republic of Mexico. It is very certain, from the whole tenor of the proofs in this case, that the vessel was not in any of the ports or waters of that Republic. She was out at sea. The captain, mate, and supercargo, depose, in their protest, that they were on their voyage.

Undoubtedly the captors and the Mexican tribunal (if there was one) condemned her upon the same ground that they condemned the schooner Constitution and her cargo, (which is also before the Board,) and held the Susan and her cargo liable to condemnation for the suspected intention of trading with the Castle, which was prohibited by the decree of October 8, 1823.

It appears in several cases that, in the opinion of the Mexican naval officers and tribunals, the effect of that decree was, to render liable to condemnation a vessel *intending to trade* with the Castle; that if there was such an intention after the adoption of that decree to carry on such trade, all property destined to that place, wherever found, was, in their opinion, liable to condemnation. This was giving not only an extra-territorial operation to the decree, but it was setting up a principle utterly destructive to neutral rights as recognised by the law of nations—a principle everywhere repudiated and condemned. If the sentence against the Susan was upon this principle, it cannot be sustained for a moment; and it must have been on this principle, for no other was assigned for the capture.

Another ground, however, for the condemnation may be conjectured, and it will therefore be considered, though there is no proof to show that there actually was any such ground.

If the fortress of San Juan de Ulloa was in a state of actual blockade, and an attempt was made by the Susan after due notice to run or violate the blockade, the vessel and cargo might have thereby incurred the penalty of forfeiture; but the *intention* to trade with blockaded places can work no such result.

It is true the Castle, by the terms of the decree of the Supreme Government, was declared to be in a state of blockade; but it is well known that a bare decree, or ten thousand decrees, can make no blockade. Nothing but an actual competent investing force can make a blockade which neutrals are required to respect.

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"By the law of nations, the denomination of a blockaded port is given 'only to that where there is, by the disposition of the power which at-'tacks, or invests it, with ships stationary or sufficiently near to occa-'sion an evident danger in entering. And even where there is such an 'actual investment of the port, if any of the blockading ships should 'not have enforced it, the blockade is so far relaxed. If the blockade 'has not been duly carried into effect by the ships stationed on the spot 'for the purpose, it is impossible for a court of prize to enforce it."—*Wheaton on Captures*, 193—*Appendix*, 3; 3 *Rob. Rep.*, 147.

By this definition, founded on the best authority, it is established that a stationary maritime force—ships stationed sufficiently near to make access to the port or place dangerous—is indispensably necessary to constitute a blockade. In relation to the Castle, it is not pretended that any ship or maritime force was ever stationed near it, or that it ever was in a legal sense invested. In some of the cases it is said that the land batteries bore upon the Castle; and one vessel is said to have been injured or sunk at or near the Castle, by the guns on shore. It would be overruling all judicial authority, and doing violence to the well-established doctrines on the subject, to consider a land battery an actual investing force in any case.

In the case of "The Betsy, Murphy, master," (1 Rob., 78, Phila. edition,) Sir William Scott says:

"On a question of blockade, three things must be proved: 1st. The 'existence of an *actual blockade*. 2d. The *knowledge* of the party. '3d. Some *act of violation*, either *by going in* or *coming out* with a 'cargo laden after the commencement of the blockade."

What was proved, or attempted to be proved, in the case of the Susan, by the captors, is not positively known, because the proceedings (assuming there were proceedings) have not been found. It is quite certain, however, that two of the three requisite and indispensable facts could not have been proved, because it is affirmatively established that they did not exist, viz:

It is very clear, as has been before remarked, that there was no actual investment of the Castle by a maritime force; and it is, if possible, still more clear that there was no violation, either by the going to the castle or coming from it, by the Susan. She was not in the vicinity of the place which was pretended to be under blockade—she was out at sea. The establishment of either of these points shows that the Susan and her cargo could not have incurred the liability to condemnation; and whatever may have been the proceedings against her, the claim in this case is well made out; for the condemnation must have been in utter violation of the law of nations.

But as the case of the schooner Constitution, and some others, depend upon the pretended blockade of the Castle of Ulloa, and the condemnations for intending—not actually attempting—to trade with it, some further consideration of the facts and the law may be properly submitted to the Board.

It appears from the historical account of the condition of things at Vera Cruz and in that vicinity, and by the deposition of Juan J. Presas, (No. 14,) that from 1821 to 1825, Spain held the Castle of Ulloa; that for most of this period active hostilities between Mexico and Spain had

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ceased, and a free intercourse between the Castle and the city of Vera Cruz was kept up, with only an occasional interruption; and both the history and testimony referred to concur in the important fact, that the Castle obtained its necessary supplies from the city of Vera Cruz, from time to time, but a short time prior to the period at which this claim arose.

The introduction to the articles of the decree of October 8, 1823, under which the condemnation of the Susan, Constitution, and other American vessels, was pronounced, shows, that there was a *quasi peace* during most of this period. The following is an extract from that introduction: (Document, No. 11.)

"That so far, therefore, the Mexican nation and its Government, 'putting into practice the principles of lenity and prudence which 'characterize Americans, has permitted the existence of friendly rela- 'tions with the subjects of Spain, the free trade of her goods and man- 'ufactures, the exportation of national goods and money, and the free 'entry of her merchant vessels into our ports. That notwithstanding 'this generous conduct, and forgetting her true interests, the same Span- 'ish nation has not taken one step to unfold the sincerity of her in- 'tentions as to peace, but on the contrary, without losing sight of her 'ancient ideas of dominion, retains her forces in a small point of the 'continent of Mexico, where she boldly attempts to fasten upon the sons 'of this soil the ignominious yoke of servitude which so gloriously t'ey 'have thrown off," &c. It then goes on to charge the Governor of the Castle with having broken his word, "passed to the authorities of Vera Cruz,'' not to fire upon the town without previous notice, and of having opened a fire on it, which was returned from the batteries on land.

Upon this provocation, the decree of October 8, 1823, was issued; but the proofs show that this state of active hostilities did not last long, and was again succeeded by a state of *quasi peace*. It had been so far disregarded, that it became necessary in December, 1824, only five days before the Susan was captured, to issue another decree at Mexico, to revive and continue in force the decree of the preceding October. (See document No. 12.) This supplemental decree reached Vera Cruz on the very day on which the Susan was captured at sea. This fact proves that, when the Susan left the United States, the blockade, if it had in fact existed in any other shape than *a paper blockade*, had been relaxed. And if relaxed, or not carried into effect by vessels stationed on the spot for the purpose, "it is impossible for a court of prize to enforce it."—*Wheaton on Captures*, 193.

If the second decree revived the blockade, then the question of notice arises. If not properly notified, a vessel attempting to trade with an *actually* blockaded port is not implicated in any penalties. If the rules of law in regard to notice are considered, it will be found that a proper notification was not given of either decree. And were it therefore possible to adopt the monstrous doctrine that a *paper blockade* may be enforced against neutrals—a doctrine which certainly can never have any countenance from the Board—yet effect was not given to the Mexican decree by a due notification. The law on this point is thus stated, by Wheaton and by Lord Stowell:

"As a proclamation or a general public notification is not of itself

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'sufficient to constitute a legal blockade, so neither can the existence 'of such a blockade be imputed to the party, merely in consequence of 'such a proclamation or notification. Not only must an actual block-'ade exist, but a knowledge of it must be brought home to the party, 'in order to show that it has been violated."—*Wheaton on Captures*, 193; 3 *Rob. Rep.*, 147; 1 *Rob., Rep.*, 93.

No proclamation, no public notification, is shown. One of the witnesses who was at Vera Cruz at the time says, all the notice that he ever knew of the decree of the 8th of October, 1823, was the placarding of it in that city. No due notification was shown—no turning off neutral vessels which had no notice—no other use seems to have been made of the decree, but that of attempting to justify plunder upon neutral commerce.

But even where there has been actual notice, but the party has grounds to conjecture that the blockade has ceased, the vessel is not *in delicto* for attempting to trade with the blockaded port. (See the case of the "Juffrow Maria, Shroeder," 3 Robinson, 122.)

Neither one, therefore, of the three things indispensable to a legal condemnation, is shown in this case; and the capture and condemnation of the Susan and her cargo was a manifest wrong.

In the first place, there was no actual blockade. Even if there had been one, the facts show it must have been *relaxed* at the time the Susan was on her voyage and captured.

In the second place, no knowledge of a blockade was brought home to the party.

And in the third place, no act was done by the Susan to run or violate the blockade, even if it could be assumed that one in fact existed.

The general doctrine is, that a party ignorant of a blockade does not violate it and incur any penalty by entering, or attempting to enter, a blockaded port, unless first warned off.

"A vessel sailing ignorantly for a blockaded port is not liable to 'condemnation under the law of nations."—5 *Cranch*, 335.

The current recent intelligence from Mexico, at the time the Susan sailed from New Orleans, [Baltimore,] of the tranquil state of the country, Spanish Commissioners to treat of peace and commerce having been shortly before announced as having arrived at Mexico, might well justify our merchants in assuming their shipments to Mexican ports, and even to the Castle, as perfectly safe; or that, if among the very frequent changes and revolutions that theretofore occurred, such should again and suddenly break out, some notice or warning off should necessarily be given to our vessels. At all events, they sent their shipments there in ignorance of the existing state of things; and that ignorance it is seen is sufficient to save their property from condemnation under the law of nations, which is the only law that reaches this case, being a capture at sea; and it will not be overlooked that the decree in question did not, nor did any other decree or law of Mexico, authorize the capture of an American vessel at sea.

There are cases to be found, where vessels have been condemned for sailing to a blockaded port, before they reached it and attempted to enter; but such cases are dissimilar in all their circumstances to this. There is, as Sir William Scott says, in the case of the "Neptunus,"

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(1 Robinson, 144,) two sorts of blockade. One by the simple fact only; the other by a notification accompanied by the fact.

In this case, it appears very clearly, there was no actual blockade, because there was no investment of the Castle by a stationary maritime force. If, however, there had been such an investment, then it would have been a simple blockade, and not a notification with the fact of actual blockade. It is important to observe this distinction with reference to the question of knowledge.

In the case of a *simple* blockade, there must be positive knowledge of the fact of the actual investment, and an attempt to enter the blockaded port after that knowledge, in order to bring a neutral vessel and cargo under the penalty of condemnation.

The other sort of blockade, mentioned by Sir William Scott, is the actual investment of the port, or place, with notification of the fact.

What is meant by a notification, is not the mere promulgation of the actually existing blockade. Such is not the notification which the law requires, in order to attach penalties.

If Mexico had stationed ships about the Castle of Ulloa, and had given formal notice to the Government of the United States that the Castle was in a state of effective blockade, and that neutral commerce with it was not permitted, the law could presume, after sufficient time had elapsed, that our merchants had received information of the existence of the blockade from their Government; and in such a case, the plea of ignorance would be unavailing.

Should they afterwards fit out vessels to trade with the Castle, (the blockade being all the while rigorously continued,) these vessels, with their cargoes, would in that case be *in delicto* while on the voyage, without an actual attempt to enter the blockaded place; and, although taken at sea, might be condemned for violating the blockade. This is properly called a "*hard doctrine.*" So indeed it is; and the courts are always ready to relax it on slight occasions.

If the blockading force is temporarily withdrawn, not from necessity by the violence of storms—if a part of it is withdrawn, leaving an inadequate one to enforce the blockade—if any neutral vessel enters by permission, or there is want of vigilance in enforcing the blockade—it is, from either of these causes, held to be relaxed; and prize courts refuse to enforce it by sentence of condemnation.

Hence it is seen that many vessels captured on voyages to blockaded ports have been released, and their voyage declared lawful, because they had reason to *conjecture* that the blockade had ceased, or would be at an end, before they could arrive at the destined place.

The blockade of the Castle, paper blockade as it was, was not with notification; no notice of it was given by the Government of Mexico to the Governments of neutral nations.

It was not even a *simple* blockade; because there was no investing force, an indispensable requisite to a blockade. If there had been a blockading force, it would have been only a *simple* blockade. It was not a blockade with notification, for no notice was given to the United States, that the Castle was in a state of actual blockade.

It is proper to remark here, that notification to the Government of *one* neutral nation does not affect or implicate other neutral nations; each neutral must have notification.

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Taxing the imagination to the utmost, no sufficient ground for a condemnation of the Susan and her cargo can be found. The decrees of Mexico viewed as municipal laws could have no effect upon this vessel, because she was not when captured within the jurisdiction of that country. Furthermore, as municipal laws they were merely prohibitory, without any penalty, and evidently aimed against Spanish property, productions, manufactures, and trade.

In any and every point of view in which they can be regarded, they were ineffective as establishing a blockade of the Castle of Ulloa. The decree of October 8, 1823, in express terms, placed the Castle solely under the inadmissible and impracticable investment of the batteries of Vera Cruz; and it need hardly be said, that these batteries were not authorized to make captures at sea—nor did any Mexican law or decree authorize such captures.

The claim of damages for the Susan and cargo, to the full amount of the loss, is considered as fully established—a statement whereof is set forth on the next following page.

All which is respectfully submitted.

JAMES H. CAUSTEN.

BOARD OF COMMISSIONERS CLAIMS AGAINST MEXICO,
February 3, 1851.

SCHOONER SUSAN—JAMES W. ZACHARIE, CLAIMANT.

The schooner Susan, an American registered vessel, owned by the claimant, sailed from Baltimore for the Gulf of Mexico on the 10th of November, 1824. On the 20th of December following she was captured off the Mexican coast, and near the Castle of San Juan de Ulloa, by the Mexican national schooner Anahuac. The claimant alleges in his memorial that the schooner "was carried into Sacrificios, and thence ' to Alvarado, where, as is understood, both the vessel and cargo were ' condemned."

He avers a total loss of both vessel and cargo, and claims indemnity from the Government of Mexico.

In order to determine whether the claim preferred is valid, it becomes necessary to examine the cause of the capture and subsequent condemnation.

The claimant alleges that the schooner was captured "on the allega- ' tion of intention to trade with the Castle of San Juan de Ulloa, then ' in possession of the Spaniards."

An original letter from Taylor, Sicard, & Co., dated Vera Cruz, 9th January, 1825, addressed to the claimant, and filed by him as a part of his evidence in this case, stated:

"On the 3d instant the schooner Susan, Captain Newman, was ' brought in here as a prize, charged with the intention of being bound ' to the Castle."

The United States Consul at Vera Cruz, in a letter to the State Department dated January 5, 1825, said:

"The day before yesterday an American schooner, the Susan, Cap-

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'tain Newman, was sent in here as a prize, having been captured off 'the Castle, with provisions, by one of the Mexican vessels of war."

These statements constitute all the evidence before the Board which explain the cause of the capture. The subsequent condemnation and sale of the vessel and cargo by the Mexican authorities is admitted by the claimant, and is also stated in letters which he has filed as a portion of his evidence.

No record of the proceedings and judgment of the prize court in Mexico has been presented to the Board; we are, therefore, left to infer the grounds of condemnation from the general statements of the cause of the capture above referred to.

The claimant's counsel urges, that "the claim for the schooner Susan 'and her cargo is sustained upon the ground that they were not regu-'larly condemned by a court of competent jurisdiction."

The Board cannot presume this, in the absence of testimony to prove it. It is a material fact, the burden of proving which lies upon the claimant. It being admitted that the vessel and cargo were condemned by a prize court in Mexico, the Board must presume that it was a court of competent jurisdiction, and that its proceedings were regular. If the record of the court was before us, it might disprove both of these presumptions, and sustain the ground assumed by the claimant.

The fact alleged by the claimant, that he has been unable to procure a copy of the record, does not change the presumption. Whether the absence of the testimony is caused by the unwillingness of the Mexican authorities to furnish it, or by the *laches* of the claimant, the duty of the Board to regard the jurisdiction of the court as sufficient, and its proceedings regular, until the contrary is shown, remains unchanged.

It remains, then, to inquire whether the cause of the capture, and the circumstances under which it was made, as they are to be deduced from all the evidence in the case, would, under the law of nations, have justified a condemnation before a court of competent jurisdiction, and whose proceedings were regular.

At the time the capture was made, Mexico and Spain were at war. The Spanish forces, after having been expelled from every other portion of the Mexican territory, at that time held possession of the Castle of San Juan de Ulloa. The United States, as a neutral nation, could claim for its citizens only the rights which, by the laws of nations, neutrals hold in relation to belligerents. The Spanish forces in the Castle could only obtain their supplies from the land by the permission of the Mexicans, who had possession of the city of Vera Cruz, and of all the country around.

It was an important object to Mexico to cut off the supplies of her enemies in the Castle, and thus compel them to surrender. She had an undoubted right, by the law of nations, to besiege the Castle as well by sea as by land, and to treat as an enemy whoever might attempt to enter it, or carry anything to the besieged. This doctrine is laid down by Vattel, B. 3, § 117, as follows:

"All commerce is entirely prohibited with a besieged town. If I 'lay siege to a town, or only form the blockade, I have a right to hinder 'any one from entering, and to treat as an enemy whoever attempts to 'enter the place or carry anything to the besieged, without my leave."

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Mexico asserted this right, and by a decree of 8th October, 1823, "the fortress of San Juan de Ulloa is (was) declared to be in a state of blockade," and all communication with the garrison and vicinity was declared to be absolutely cut off.

On the 20th of December, 1824, another decree was published, by which the strict blockade of the Castle was continued, and the provisions of the previous decree were declared to be in full force.

More than a year had elapsed from the publication of the first decree, when the Susan was captured "off the Castle." The evidence filed by the claimant proves, beyond doubt, that she sailed from the United States for the purpose of disposing of her cargo at the Castle. Her manifest specified her destination to be the "Gulf of Mexico," and not any particular port. The protest of the master, made before the United States Consul immediately after the capture, states that the vessel was "bound on a voyage from Baltimore to the Castle of San Juan de Ulloa." The same fact was again asserted by the master, in an affidavit which he made at New Orleans in March, 1825.

The claimant's counsel insists that the capture of the Susan was illegal, because, as he alleges, she was captured "out at sea," and not in the vicinity of the Castle. This assumption is not sustained by the testimony. Not one of the papers filed in the case contains such an allegation. The protest of the master does not specify the distance of the vessel from the Castle when she was captured. If the vessel had been captured "out at sea," it is hardly to be presumed that the statement of so important a fact would have been omitted in the master's protest. But besides this strong negative testimony, the assumption is disproved by the letter of the Consul above referred to, in which he says the Susan was "*captured off the Castle, with provisions.*"

There can, then, be no reasonable doubt that the Susan sailed from Baltimore with a cargo of provisions for the Castle of San Juan de Ulloa, which was then in a state of blockade, and that she was captured by a Mexican vessel of war while off the Castle, and attempting to violate the blockade.

It is urged that, notwithstanding the decrees of blockade before referred to, there was no actual blockade of the Castle, because there was not kept in the vicinity a sufficient maritime force to enforce it.

It is true the law of nations requires a blockading power to keep a force sufficiently near the blockaded port, "to occasion an evident danger in entering." The evidence in this case does not disclose the extent of the maritime force which Mexico kept in the vicinity of the Castle. The Board has no right to presume, in the absence of testimony, that a sufficient force to sustain the blockade was not kept there. The claimant, who seeks to invalidate the decision of the prize court in Mexico upon this ground, should prove it. This he has wholly failed to do.

That the force which Mexico kept there was sufficient "to occasion an evident danger" to the Susan in entering, is sufficiently proved by the fact of her capture. It is also in evidence before the Board, that about that time several captures of neutral vessels were made, on the allegation that they were attempting to violate the blockade. So far as the evidence upon this point goes, there is a decided preponderance in

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favor of the position that Mexico kept as large a maritime force in the vicinity of the Castle as was necessary, under the law of nations, to give effect to the blockade.

Besides, it is in evidence before the Board, that the Mexican land batteries at Vera Cruz commanded the approach to the Castle, and that one vessel was sunk by them while discharging her cargo at the Castle. Although the investment of a besieged post or fortress by a land force may not be technically a blockade, there can be no doubt of the principle that the besieging force has the same right, under the law of nations, to cut off supplies and to prohibit a trade with neutrals, which is possessed by a blockading squadron. The object in both cases is the same—to force a surrender of the enemy by depriving him of the facilities to prolong the contest which a trade with neutrals might afford him; and the right to capture the property of neutrals trading with the enemy, under such circumstances, is undoubted in either case.

It is also insisted that the capture of the Susan was illegal, because she was not warned off.

The claimant has filed among his papers an affidavit made in New Orleans, in March, 1825, by the master and supercargo of the Susan, in which they state, "that on their passage from Baltimore to the 'Castle of San Juan de Ulloa, said vessel was not boarded or ordered 'off by any Mexican cruiser, previous to being captured by the Ana-'huac."

It is not essential, to give validity to the capture of a neutral vessel entering a blockaded port, that she should be warned off. The fact of her being warned off is but an evidence of notice of the blockade, and the notice being proved *alundi* is equally effective. The facts developed by the evidence in this case are sufficient to justify the presumption that the fact of the blockade was well known both to the owner and the master. The blockade had then been proclaimed more than a year. The proximity of New Orleans (where the owner resided) to Vera Cruz, the frequent communication between the two places, and the fact that the owner was extensively engaged in trade with that port, forbid the conclusion that he was ignorant of the blockade. He does not aver a want of notice in his memorial, nor is it shown by any of the testimony. The affidavit of the master and supercargo, before referred to, does not allege that they were ignorant of the blockade.

The English courts of admiralty have decided that sailing for a blockaded port, knowing it to be blockaded, is a breach of the blockade from the departure of the vessel, and that she may be legally captured wherever found.

From a careful examination of all the evidence adduced by the claimant, the Board is satisfied that nothing is proved which would justify a decision that the judgment of the prize court of Mexico was in violation of the law of nations.

It is therefore decided that the claim preferred on account of the capture and condemnation of the schooner Susan and cargo, is not a valid claim against the Republic of Mexico, and it is therefore not allowed.

GEORGE EVANS,
CALEB B. SMITH,
ROBERT T. PAINE,
} *Commissioners.*

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REMARKS UPON THE COMMISSIONERS' OPINION IN THE CASE OF THE SCHOONER SUSAN.

Having been favored by the Board with an opportunity to examine their opinion in the case of the Susan, I beg leave, in the most respectful manner, to suggest some points in regard to which I hope to satisfy the Board there is some misapprehension on their part as to facts, and the application of the law to them. I think the Board have gone too far in assuming, as they do, that the claimant admits the Susan "*was condemned by a prize court in Mexico.*" The words, "*by a prize court in Mexico,*" are not in the memorial, or any of the papers in the case, except the opinion of the Board. They have regarded the statement of a rumor in the memorial as the averment of a fact; and have, by mistake, added a clause to it, which alone renders the significance they have given to it plausible.

There is certainly no such admission in the papers before the Board. The claimant states, frankly and truly, that the vessel and cargo were first taken to Sacrificios, and thence to Alvarado, "where," *as is understood,* "both the vessel and cargo *were condemned.*" He evidently is not averring a fact within his own knowledge, but only speaking of a rumor, a report, which came probably from the Mexicans, and was put forth as a pretext for their wrong.

Subsequently to the presentation of the memorial on which the above-quoted expression is used, the claimant, as is well known to the Board, has diligently sought for a copy of the proceedings in the proper place for them, and no trace whatever of any proceedings has been found.*

In the argument filed by the undersigned in this case, he therefore denies—as under the circumstances he has a right to deny—that there was any such court. So far as he could establish a negative, which cannot be legally required of him, he has done so.

On the most thorough search, no record of the proceedings can be found. And he moreover strengthens the inference that there was no condemnation by a court, by the declaration of President Victoria, in his inaugural address to the first Constitutional Congress of Mexico, on the first of January, 1825, (only ten days after the vessel was captured, and eight days before the vessel and cargo were sold,) *that there were no federal courts in Mexico, viz:*

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* The Board will well recollect that the trial of this case, and several others of like character, have been deferred since May of last year, for want of the proceedings only, which were formally required from the Mexican Government by my requisition, which was presented to the Board, received its official sanction, sent by it to the Department of State officially, and in due form urged upon the Mexican Government by said Department and our Minister at Mexico. That requisition has been again and again pressed upon the Department, and I have obtained further and more pointed instructions to make it effectual; and I have also pressed our Minister in Mexico, directly and most earnestly; but all these efforts have been unavailing. And the case is now submitted to the Board after said fruitless search, which, under the extraordinary circumstances of the case, entitle it to a liberal construction. What has been done in the manner indicated is tantamount to a thorough search; but this was not much relied on; the State Department was further invoked to instruct the Consuls to add their efforts also; and the claimant also solicited the aid of the Consuls, and his correspondents on the spot, to pursue the search; but nothing has yet been found.

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" The federal judiciary not existing, and the Government being pre-
' cluded from the intervention which it formerly had in that of the an-
' cient provinces, its action in this respect has been almost null, and
' will be so until the supreme court be instituted, by a law designating
' the number and local relations of the district and circuit judges, and
' prescribing rules for territorial tribunals and the federal district."

Before the proofs were collected, or rather that part of the proofs which it was not his duty in the regular course of proceedings to present, the claimant states, in his memorial, not what the Board has mistakingly imputed to him, but only that it was *understood* the vessel and cargo were both condemned. He is speaking of the account given of the disposition they had made of his property, by his commercial agents, and he uses their language.

After the strong negative proof to the contrary, such an expression as he made in his memorial, or such a one as the Board impute to him, ought not to be set up against him, as an admission that there was in fact an actual condemnation, and then construct upon that the presumption that it was a court with competent jurisdiction, and its proceedings were regular. If the memorial had contained what the Board, under a mistake, say it did contain, it would not, in my opinion, justify the inference or presumption that the court had competent jurisdiction and the proceedings were regular. But the great error of the Board, on this point under consideration, is an *error of fact*. They say, " It ' being admitted that the vessel and cargo were condemned *by a prize* ' *court in Mexico*, the Board must presume that it was a court of com- ' petent jurisdiction," &c. If they look at the memorial which is said to contain " *this admission*," they will not find one word in relation to " *a prize court*" in it.

Had the admission been what the Board understood it to be—if the claimant, as a matter of fact, and not merely as a thing understood, had stated that his vessel and cargo were condemned " *by a prize court in Mexico*"—there would be less ground of objection to the inference which they drew, of a court of competent jurisdiction, and regularity in the proceedings; but it is due to the Board to presume that they will not, from the mere statement of the claimant that the vessel and cargo, *as is understood*, were both condemned, without saying one word as to the mode of condemnation, where, or by whom it was done—I repeat, that they will not presume from such a loose expression, evidently referring to hearsay—

1st. That there was a court;

2d. That it had competent jurisdiction; and

3d. That the proceedings were regular.

By inadvertence, undoubtedly, the Board have imputed to the claimant an admission he never made; and, by the inference drawn from it, an important admission, destructive of his claim.

The correction of this error in fact must, as I conceive, change the result of the Board's decision; it must take away the whole ground of defence to the claim, viz: that there was a regular condemnation of the property by a court of competent jurisdiction, conducting its proceedings in a regular manner; for, without a condemnation by a competent court in a regular way, Mexico could get no title to the property she took from the claimant.

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The Board are respectfully requested to recollect that it was no part of the claimant's duty to negative the fact that there was such a court, and that it proceeded to a sentence of condemnation. This is matter to be shown affirmatively against the claimant, and cannot be required from the party asserting the claim.

"Whoever sets up a title to property, under a decree of condemna-'tion, is bound to show that the court had jurisdiction of the cause, 'and that the decree of the court has been rightly pronounced, upon 'the application of parties competent to ask it."—*La Nereyda*, 8 *Wheaton*, 108.

The Board has laid down an exactly reversed position in relation to the jurisdiction of the court; for they say the burden of proving the court had not jurisdiction lies on the claimant in this case.

Mexico could only resist the claim in this case by showing a title to the Susan and cargo, under a decree of condemnation by a court of competent jurisdiction. Had she been in fact a party before the Board, she would have been obliged to show such a decree by such a court, in order to resist the claim. The United States occupy her position, and to a considerable extent are charged with her duties.

To require the claimant not only to prove his claim, but also to repel bare presumptions, by proving negatives, is exacting of him impossibilities. If the Board, under the peculiar [circumstances] of the cases, require the claimants to disprove negatively, in support of their claims, what ought to be proved affirmatively in resistance to them, they may do great injustice to fair claims by going too far in this direction; as it is believed they have in this case.

Let it be supposed that this claim had been laid before the mixed Board, under the convention of 1839: could the Mexican members of it have been sustained in the position which this Board has taken? If it had appeared there, as it does here, that the claimant had stated that he had heard, or *it was understood*, the vessel and cargo were both condemned, would it not have been strange, indeed, for them to urge, and still more strange in the Board to acquiesce in the position, that the claimant had admitted a condemnation, and consequently the Board must presume that it was pronounced by *a court*, and *that the court* had competent jurisdiction; that from the bare fact that the claimant had said that he had heard, or *understood*—not pretending the fact was in his own knowledge—that the property was condemned, the actual condemnation by a duly authorized court should be inferred from these facts, were sufficiently established, and no decree, no record, no proceedings need be produced. On the contrary, would not Mexico or her commissioners have been required to show, ought they not to have shown, in order to defeat the claim—

1st. That there was a decree of condemnation;

2d. That it was pronounced by a court of competent jurisdiction; and

3d. That the proceedings were in due form of law?

They could not have been allowed the extravagant presumption that, because the claimant had stated a rumored condemnation, there was a court which condemned; that it had a competent jurisdiction, and had conducted its proceedings in a regular manner.

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And, according to the decision of the Supreme Court, in the case of "*La Nereyda*," 8 *Wheaton*, 108, before cited, she must show a title under a decree of a court of competent jurisdiction; and even more—it requires that it should appear that the court acted in the matter on the application of a proper party. So, it is conceived, the case would have stood before the mixed Board. Mexico must have allowed the claim, or shown a decree of condemnation for good cause by a court of competent jurisdiction.

Is the case altered in its principles? Are the rules of law there applicable to it not only modified, but reversed, by a change in the mode of constituting or composing the tribunal? Such cannot be the case.

If the claimant shows the fact that his property has been taken from him, he has established a right to indemnity, unless it is shown on the part of the captors that they had a right to take it; and that right can no otherwise be shown than by a decree of condemnation, such as has been described.

The claimant thinks, from the pains taken to find a record, after presenting the memorial, that he is warranted in saying that what he then understood to be true was not true; that, in fact, the vessel and cargo were never condemned; and that the hearsay report which he mentioned in his memorial should not be taken by the Board as an admission of the fact of a condemnation by any court, regular or irregular, or by an association of depredators, inasmuch as no proof, after diligent inquiry, can be found to establish it, and enough appears to make it very questionable.

The letters referred to, in which a condemnation is spoken of, do not weaken the position here mentioned. None of the writers pretend to have any knowledge of any judicial proceedings, or to speak of anythings but vague reports, or the pretence set up by the Mexicans for taking the claimant's property. All inferences fairly derivable from them are rebutted by the fact that no proceedings in the case can be found.

The Commissioners seem to impute the non-production of the record to one of two causes: "the unwillingness of the Mexican authorities to produce it," or "the *laches* of the claimant." But are there facts or circumstances to warrant the assumption of either? The first is a presumption unsupported by the proofs; for there is nothing to show that Mexico would not willingly have produced the record, if one could have been found. A regard to her own character would incline her to do so. The second is rather in opposition to the facts; if the record had been evidence in support of the claim, the claimant could not have done more than he has done to procure it.

The Board, it is respectfully urged, has erred, not only in holding what was said in the memorial to be admission that there was a condemnation by a court of competent authority, but they also err in reversing the rule of law, by holding that the burden of proving the court had not competent jurisdiction is thrown upon the claimant.

The doctrine on this subject, as is clearly shown by the case referred to in Wheaton's Reports, vol. 8, 108, is directly opposite to that laid down by the Board.

In strict law, it ought to be shown *against* the claimant that his

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property was taken from him, not only by a decree of a court, but a court of competent jurisdiction.

In making the efforts the claimant has to find and get the proceedings, (which he was not bound to do,) he has done enough to destroy the presumption that there was either a court or a condemnation. This has been done, not as a duty, but a work of supererogation.

The presumption of condemnation by a competent court, or by any court, is strenuously resisted; but it is proposed to go a step further—perhaps an unnecessary step—and examine the grounds of the supposed decree in this case.

It is believed that the Board have been misled by a misapprehension of the relations which existed between Mexico and Spain. In the case of the schooner Scott, which has not yet probably received the particular attention of the Board, the actual condition of things between the two countries at the time that vessel and the Susan were seized has been touched on, but not sufficiently presented. There was not a state of war, but of *quasi* peace, between the two countries, during nearly the whole four years the Spanish forces held the Castle, after having been expelled from the rest of Mexico. This expulsion was in 1821. During that year, and up to the 8th of October, 1823, a state of actual peace existed, though there was no treaty of amity. The preface to the decree of that date (October 8, 1823) shows conclusively a state of peace. It expressly admits that Spanish vessels had free entrance into Mexican ports, (and that many of them were then there,) particularly into the principal port of Vera Cruz; they brought in Spanish products, and took away Spanish and Mexican property, specie, &c. This was not a state of war.

If they did not act towards each other as belligerents, they could not require neutrals to regard them as belligerents, and concede to them belligerent rights.

It is true the decree of October 8, 1823, was a warlike measure. It temporarily interrupted the previously existing relations of peace—the free intercourse and trade between them; but the interruption was of short continuance. There is abundant testimony, in the cases touching upon the pretended blockade of the Castle, to show that soon after the issuing of that decree a peaceful and free intercourse was again established—the garrison was supplied from the shore, and intercourse by neutrals was permitted. This was the state of things as generally known, and of course known at Baltimore, when the Susan sailed from that port. While she was on her voyage, some circumstances of irritation caused a revival of the order of October 8, 1823. The extract from the American Consul's letter to our Secretary of State, of the 5th of January, 1825, (No. 13,) declares as follows: "*Hostilities have again commenced between San Juan de Ulloa and Vera Cruz,*" &c., This authorizes the inference that previous to that time, which was a month after the Susan sailed from Baltimore, and fourteen days after she was captured, there was not a state of hostilities. Under the appearance of peaceful relations, at most under the state of intermitted hostilities, American merchants, being neutrals, fitted out their vessels to trade with the Castle as well as with Vera Cruz; they had an unquestionable right to do so, and it was a gross fraud upon them—a violation

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of their neutral rights—to set up the pretence that they intended to pursue an illicit trade—a trade in contravention of belligerent rights; and upon that pretext to involve their property in the penalties of condemnation.

The following extract from a deposition of Juan J. Presas, then a highly respectable merchant of Vera Cruz, and afterwards a naturalized citizen of the United States, shows that the relations between the Castle, while held by the Spaniards, and Vera Cruz, were not belligerent, but peaceful:

"During the years 1821, 1822, 1823, 1824, and 1825, he was residing on the coast of Mexico, near Vera Cruz, and was well acquainted with the commerce of that port; and that during the first four years the city of Vera Cruz was occupied by the Mexican troops, while the Castle of San Juan de Ulloa was held by the troops of the King of Spain—that, notwithstanding that all Spaniards had been expelled from the interior of Mexico, many were permitted to remain on the coast, and the Castle of San Juan de Ulloa was permitted to draw her regular supplies of provisions from the city of Vera Cruz during the years 1821, 1822, 1823, and 1824; but some time in the year 1824 a change of commanders in the city of Vera Cruz took place, and the Castle was prevented from drawing her usual supplies, and declared in a state of siege and blockade, under a decree which had issued by the Supreme Government in the year 1822, which had not previously been enforced; and a new decree was published, directing that foreign nations should be notified—never heard of any notice having been given to foreigners, other than a placard posted up at the corner of the streets of Vera Cruz, and a notification given to the commander of the Castle by the commander of the city—heard of several captures having been made by a small armed schooner under the Mexican flag."—*See Doc. No.* 14.

This testimony proves that the decree of October 8, 1823, was not enforced, but remained a dead letter; that, until the issuing of the second decree, all about Vera Cruz bore the relations of peace.

The Board have fallen into a great error of fact by assuming that, after the first decree, there was in fact a continuous state of active hostilities, and that the Castle after that date was at all times a blockaded and besieged place—that this fact was notorious to all the world—and that the Susan was *in delicto*, even for fitting out at Baltimore, and entering on her voyage to the Castle. I think I am not mistaken that this is their position, for, without it can be sustained, their decision is unsustainable.

The Board say that "the facts developed by the evidence in this case are sufficient to justify the presumption that the fact of the blockade was well known to the owner and the master."

A very different view of the facts is taken by the counsel; the careful examination of them convinces him that they repel such a presumption. They show there was no actual blockade, no serious interruption to commerce for most of the time, nor an exterior of a hostile state between Spain and Mexico. He thinks it is made quite manifest by the proofs that there was not a blockade at the time the Susan sailed; in fact, no hostilities, but that a *quasi peace* existed.

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To rebut the presumption of the Commissioners above stated, I ask their attention to the aforegoing quotation from Presas's deposition, and also to the following extract from the original letter of the captain of the Scott, filed in the case of that schooner, as document No. 12. The Scott, it will be recollected, arrived at the Castle on the 4th of January, 1825. She sailed from the United States after the Susan. Public opinion at Baltimore was undoubtedly the same when the Susan sailed as it was at New Orleans when the Scott left that place. The captain of the Scott says:

"When I sailed from New Orleans, I knew not that the Castle was 'in a state of blockade. I was not boarded during the passage by any 'Mexican cruiser to advise me of the existence thereof, if any such does 'exist; it is, besides, a notorious fact, that until the present period 'American vessels have had free communication with the Castle, and 'the trade has been always considered legal; consequently, I cannot 'conceive why my vessel has been treated by the Government of Vera 'Cruz worse than an enemy, for the forts of that town did not fire upon 'the Castle, a declared foe," &c.

This is a cotemporary document, written on January 6, 1825. This letter reflects the public opinion of the state of things between the Castle and Vera Cruz, as they were believed at New Orleans when the Scott sailed, and undoubtedly as they were understood at Baltimore when the Susan left that port.

I am fully convinced that, if the Commissioners will take the trouble to look at the proofs in the cases of the Susan and the Scott, they will be satisfied that hostilities were intermitted, if they before existed, until the issuing of the second decree; and even shortly after that was issued they were again intermitted, and that neutral merchants did believe—and the deportment of the belligerents authorized them to believe—that commerce with both Vera Cruz and the Castle was thrown open to them; and that, in fitting out their vessels to either of those places, they were pursuing a permitted commerce and respecting belligerent rights.

It is very clear that no nation can have the rights of a belligerent, unless it pursues the conduct and maintains the attitude of a belligerent. If it claims to be in a state of war with another country, it must prosecute the war with the means it can command. If it ceases to carry on hostilities, it cannot say to neutrals that they shall regard its rights as a belligerent. In this case, hostilities were not only intermitted, but a free commercial intercourse was established at the very time the Board assume the parties were *flagrante bello*. They give this unfair advantage to Mexico: they propose to allow her the benefits of depredating upon our commerce, considering it illicit by reason of a state of war, while she is released from the burden of carrying on a war or presenting to the world a belligerent attitude; they regard the Castle as a besieged or blockaded place during the whole time it was in possession of the Spaniards, after they were driven from the interior of Mexico; yet the Mexican decree of October 8, 1823, shows that until that date they had as open and unrestricted trade with Spain as they could have had in the midst of the profoundest peace. The deposition of Presas, before referred to, shows that the same free intercourse was continued

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after the decree of the 8th of October, 1823. The other proofs show that our merchants did believe, and had reason to believe, that there was no such hostilities between Mexico and Spain, or between the Castle and Vera Cruz, as would implicate their commerce with either.

While I would avoid indulging in uncharitable imputations, I feel authorized to say that it appears to me that the singular conduct of Mexico—in establishing at one time a free commercial intercourse between herself and Spain, and asserting no belligerent right—then issuing a decree of blockade without enforcing it—then again falling back into a *quasi peace*—afterwards renewing the decree of blockade, and siezing upon our vessels and cargoes, under circumstances which show the owners did not, and could not, know of the renewal of the decree, or the enforcement of it, and confiscating their property—looks to me like a design to entice our merchants to put their property within the grasp of their fangs. If in this I am wrong, I am not more so than the Board are in holding that she maintained in good faith a state of war with Spain, while the Castle was in possession of Spanish troops; and that hostilities were so prosecuted against Spain as to be notice to all the world, that neutral commerce with the Castle was rightfully interdicted by her besieging or blockading force.

The Board assume there was in fact an effective blockade of the Castle, from the promulgation of the first decree. It was attempted to be shown in the former argument—and I then was and still am confident that it was shown—that in fact there never was an actual blockade of the Castle by Mexico. I have added the foregoing remarks as a reinforcement of that argument; and I do not allow myself to doubt but that the Board, on again looking at the proofs in this case, and the additional facts contained in the case of the Scott, (not yet considered by the Board,) and applying to them the legal rule of construction to which their attention will be invited, will be convinced that the blockade, if it ever existed under the first decree of October 8, 1823, had been relaxed, and ceased some time before the issuing of the second decree. Without extending that argument, I will only bring to the notice of the Board some further authorities:

Chancellor Kent, in his Commentaries, volume 1, p. 145, says:

"The Government of the United States have uniformly insisted that 'the blockade should be effective by the presence of a competent force, 'stationed and present at or near the entrance of the port; and they 'have protested with great energy against the application of the right 'of seizure and confiscation to ineffectual or fictitious blockades."

Again he says, at page 146 of the same volume:

"But if the blockade be raised by the enemy, or by applying the 'naval force, or any part of it, though only for a time, to other objects, 'or by mere remissness of the cruisers, the commerce of neutrals to 'the place ought to be free. The presence of a sufficient force is the 'natural criterion by which the neutral is enabled to ascertain the existence of the blockade. He looks only to the matter of fact; and if 'the blockading squadron is removed when he arrives before the port, 'and he is ignorant of the cause of the removal, or if he be not ignorant, and the cause be not an accidental one, but voluntary, or produced by an enemy, he may enter, without being answerable for a

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'breach of the blockade. When a blockade is raised voluntarily or 'by a superior force, it puts an end to it absolutely; and if it be 'resumed, neutrals must be charged with notice *de novo*, and without 'reference to the former state of things, before they can be involved in 'the guilt of a violation of the blockade."

The assumption of the Board that there was a continuous blockade—a fact not to be assumed, but to be established by clear proof—cannot be sustained against the foregoing authority. In none of the cases, none that have been examined by the undersigned, is there any proof whatever that there was even a single armed vessel, not even a gun-boat, *stationed* about the Castle at the time of issuing the first decree, or at any subsequent period. The Board has assumed that Mexico had a considerable naval force; but that fact does not appear in the cases. Indeed, there is reason to believe that she had but a small naval force at that time. Only two public armed vessels are mentioned in the proofs, the schooner of war Iquala and the Anahuac; and it is not shown that either of them was *stationed* about the Castle; they were both cruising at large in the Gulf. Neither of them is shown to have belonged to a blockading squadron; and there is no proof there ever was a blockading squadron, or "competent force [or any force] *stationed* and *present* at or near the entrance of the port"—the Castle. And according to the law as laid down by Chancellor Kent, in which all sound authorities agree, there was no blockade. All pretence for presuming an existing blockade when the Susan and the Scott sailed is believed to be unfounded; indeed, the proofs show it to be unfounded.

Besides giving, as I think the Board has done, more effect to the facts, or rather circumstances, favoring the notion of an actual blockade than they are rightfully entitled to, I respectfully suggest, and feel confident it can be shown to the satisfaction of the Board, that they have mistaken and misapplied the rule of evidence in relation to blockade. They do not disguise the fact that they have been liberal in presumptions in favor of the blockade; but the rule of law requires strict proof, and discountenances all latitude of presumption.

At the same place in Kent's Commentaries (volume 1, p. 143) to which I have referred, is found the rule of law for which I contend, and claim the benefit of in the present case. I think the Board will be satisfied that they have overlooked the true rule in regard to the evidence, and have been guided to their conclusions in regard to the blockade by a rule of a quite opposite character. I must invite their especial attention to the following extract from page 144. Chancellor Kent says:

"The law of blockade is, however, so harsh and severe in its oper-'ation, that, in order to apply it, the fact of the actual blockade must 'be established *by clear and unequivocal evidence;* and the neutral 'must have had due previous notice of its existence; and the squadron 'allotted for the purposes of its execution must be fully competent to 'cut off all communication with the interdicted place or port; and the 'neutral must have been guilty of some act of violation, either by going 'in, or attempting to enter, or by coming out with a cargo laden after 'the commencement of the blockade. *The failure of either of the* 'points requisite to establish the existence of a legal blockade amounts

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'to an entire defeasance of the measure, even though the notification 'of the blockade had issued from the authority of the Government 'itself.''

I venture to assert that not one of these requisite points is made out, as the law requires they should be, by *clear* and *unequivocal* evidence, in the case of the Susan or the Scott. The evidence, so far from being clear and unequivocal, it is not to be found; there is not enough of it to support a plausible presumption. There is no proof that there was ever a blockading squadron, or even a single ship of war, stationed about the Castle; no proof of previous notice; no attempt to enter after notice; indeed, nothing is proved to implicate either vessel.

The claimant and his counsel differ essentially with the Board as to the condition of Mexico at the time of the captures under consideration, in regard to the naval force of Mexico, and the employment of it. The Board say:

"So far as the evidence upon this point goes, there is a decided pre-'ponderance in favor of the position that Mexico kept as large a mari-'time force in the vicinity of the Castle as was necessary, under the 'law of nations, to give effect to the blockade."

If there be any proof in any of the cases which have come under the view of the counsel, (particularly including the Susan and Scott,) to show that *any* maritime force was stationed in the vicinity of the Castle—that a single vessel or a gun-boat was stationed there, or was about it, (only occasionally, as they were wandering about the Gulf)—such testimony has escaped his notice. At the time alluded to, the Government of Mexico was almost in a *derelict* state; she had, as President Victoria stated on the first of January, 1825, no federal courts; the ties which bound the Departments or Provinces to the central Government were broken; and he urges the re-establishment of them.

It is therefore difficult to see how Mexico could—there is no proof that she did—keep up a respectable naval force. No maritime force except two schooners of war, the Iquala and the Anahuac, are mentioned, and these were cruising about the Gulf. The assertion is therefore repeated, with confidence in its entire accuracy, that there is no proof that any naval force, not so much as a single vessel of war, was ever stationed about the Castle, to maintain the proclaimed blockade, down to the time of the attacks committed on the Susan and Scott.

The authority cited from Chancellor Kent shows what a belligerent must do to sustain his blockade, and with what clearness of testimony he must establish it. If presumptions are to be allowed, the most probable one is, that Mexico failed in every one of the indispensable requirements of a legal blockade.

Though it is denied, and the evidence warrants the denial, that she ever had a blockading force stationed in the vicinity of the Castle, it is admitted that she had in the Gulf sufficient force to capture an unarmed neutral vessel while engaged in lawful trade; but it was not expected that the claim for the Susan would be met and resisted by the argument that she must have had a sufficient blockading force in the vicinity, because she had there (a doubtful fact) sufficient force to capture that vessel; that is, if there is force sufficient to capture a single neu-

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tral vessel in the vicinity of a place declared to be in a state of blockade, that is evidence not only of an actual blockade, but the further evidence that the blockade has been kept up constantly and properly, from the day it was proclaimed. It seems to amount to this proposition: that, after proclaiming a blockade, without showing in point of fact an actual blockade, the party has a right to capture any vessel, in the vicinity of the port, that it has the ability to capture.

Rather than give validity to such doctrine, it would be better for neutral commerce to give full effect to a paper blockade.

As both the Susan and the Scott sailed from the United States before the decree of the 14th of December, 1824, was promulgated, they cannot be implicated for sailing to a blockaded port—if there never was, or ceased to be, a blockade under the first decree.

They must have been warned off, or charged, with direct proof, with actual notice, before they could be liable to confiscation.

Sailing before the establishment of a blockade, they would not be *in delicto* if they had attempted to enter the port, had there been a blockading fleet before it as large as the whole British navy.

In the argument in the case of the Scott, the two kinds of blockade are pointed out, and the legal doctrine applicable to each. In the second kind of blockade—a blockade with notification—actual notice of it need not be brought home to the master or owner of the neutral vessel. Of such a blockade there may be an implied or constructive notice; but that is not the case in regard to a simple blockade.

The Mexican blockade (admitting *arguendo* there was one) was a simple blockade.

The undersigned is convinced that the Board, by not discriminating between the two kinds, and the doctrine in regard to notice peculiarly applicable to each, have been led to an erroneous conclusion in this case; and have applied the doctrine of implied notice to a simple blockade, whereas it is peculiarly applicable to a blockade with notification.

A blockade with notification is where the Government of the blockading belligerent gives notice to the Government of a neutral nation of the actual blockade, and enjoins upon the Government of the neutral nation to make the fact known to her merchants.

After a proper length of time, it may be presumed that such merchants have, through their Government, received notice of the blockade. To such a case the doctrine of construction or implied notice is applicable. The form of proceeding in such a case will be seen by the paper hereto [annexed,] marked A.

The doctrine of constructive notice, or knowledge *aliende*, referred to by the Board in support of their views in the case of the Susan, applies to cases arising under a blockade with notification.

But there was no notification of the pretended blockade of the Castle of San Juan de Ulloa. Sir William Scott states, in one of the cases referred to, that a notification to one neutral nation is not a notification to another neutral nation.

In the case of simple blockades—and such was the Mexican blockade, if it was anything but a mere fiction—the law is laid down with great precision in the case of the "Betsy"—1 Rob. Rep., 98—referred to in the filed argument.

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Actual knowledge must be brought home to the neutral, before he can be implicated in a violation of the blockade. A proclamation or general notification is not a sufficient notice. "A knowledge of the existence of such a blockade cannot be imputed to the party, *merely* in 'consequence of such a proclamation or notification."—*Wheaton on Captures, p.* 193.

The doctrine of all the cases is, that there must be actual knowledge of the blockade brought home to the neutral. This is distinctly stated by Wheaton and Sir William Scott, in the case of the "Betsy;" and by none anywhere controverted. The captors must show actual knowledge brought home to the captured—so the authorities say; but the Board seems disposed to be satisfied with less, much less, than I suppose the law requires.

The counsel for the claimant differs widely from the Board as to the facts of the case.

If it has been shown, as I think it has, that there was no actual blockade at the time the Susan and Scott sailed, then the ground of the presumption of the Board on the point of notice is swept away, having not a single fact on which to base the slightest presumption of notice.

Assuming more than is proved, that there was a blockade when the first decree was issued, it is most evident that there was no blockade for some time before the second decree. The commerce to the Castle was an open, free commerce to neutrals when these vessels sailed; and if there was, in fact, an investing force when they arrived, they could not be implicated until they were warned off.

A neutral vessel sailing from a port before the knowledge of the blockade had reached it, is "entitled to a notice, *even at the blockaded port.*"—The *Spes and Irene*, 5 Rob. Rep., 76.

If the counsel, in the argument submitted, went beyond what was warranted by the testimony in saying that the Susan was captured "*out at sea*," the Board are equally without support from the proof, in holding that she was captured off the coast of Mexico, *near the* "*Castle of San Juan d'Ulloa.*" Of the two inferences, it is believed the former is, by the evidence, rendered the more probable. The proof does not *show precisely* where she was. The captain, with Lincoln and Manter, who authenticated the protest under oath, are the only witnesses giving testimony on the subject, who could know where the capture took place. The captain, in the protest, states:

"Departed [from Havana, where he had been driven by stress of 'weather] December 15, and, in prosecution of the legal voyage aforesaid, were fallen in with and captured by the national schooner the 'Anahuac, Lieut. Com. William Cochrain, on the 20th of December, 'and sent into the port of Sacrificios," &c.

This language strongly conveys the impression, though it does not directly aver the fact, that the capture was made "out at sea." If she was not out at sea, and was in the vicinity of the Castle, she could hardly have been sent into the port of Sacrificios; for that is in, or a part of, the harbor of Vera Cruz. But the American Consul, in his letter to the Secretary of State of his Government, says that she was "captured *off the Castle*, with provisions." This testimony by no means fixes the place of capture. The Consul must have spoken from

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information derived from others, not from the *captured* certainly, but probably from the *captors*. This is not an inference, but a fact; it is shown in the very letter from the Consul in which the expression "off the Castle" is found, for in it he says: "The captain and supercargo 'were taken out, and detained on board the vessel of war, so that I 'have yet to learn all the facts connected with the capture." The captors were at Alvarado when this letter was written, and the information must have come from them, and not from the captain and supercargo, who were then confined in a gun-boat at Sacrificios.

The expression *off the Castle*, is not equivalent to *near the Castle*. A vessel is often said to be off a port when she is out at sea, many leagues distant from it. By the proofs, it appears that the first information we get that the Susan was captured *off the Castle*—which the Board construe to mean "near the Castle"—is from the American Consul, in his letter of the 5th of January, 1825; but the Consul states in that very letter that he has not learned the facts of the case, because "the captain and supercargo were taken out, and detained on board the vessel of war." He must be understood as sending to our Government the Mexican account of the affair. The next thing we hear on the subject is the letter of Taylor, Sicard, & Co., dated Alvarado, 9th January, 1825—Taylor, of this firm, was the American Consul who wrote the former letter of January 5. It is very clear that this second letter also was written before any communication with the captain and supercargo, and only stated what the captors or the Mexicans said in relation to the capture. It is very natural, as the Mexicans had already (within six days, and in the absence of the supercargo, captain, and crew of the Susan) sold the vessel and cargo, that they should assign a plausible cause, and select a proper place for the capture, in order to make sure of the booty. To show that the fact stated in this letter was also of Mexican origin, and ought not to be used against the claimant without proof of its truth, I extract a sentence from it. After alluding to the pretended condemnation, and the sale of the vessel and cargo, the writers say: "We are ignorant of all other facts, save that of her capture and condemnation." This shows that they did not know the place of the capture, though they gave the Mexican statement that it was off the Castle. It is hard, indeed, that this Mexican story, got up to cover the wrong, should be used, without being substantiated by proof, to defeat a just claim.

There is another fact in this case which, when brought to the particular attention of the Board, must convince them that the Susan was not captured "near the Castle."

The American Consul at Alvarado hastens to give early information to our Government of the capture. He writes to the Secretary of State here before he had seen the captain and supercargo, they being yet confined on board the Anahuac, or a gun-boat at Sacrificios. His letter is dated the 5th of January; in it he says: "The day before yester-'day, an American schooner, the Susan, of ——, Captain Newman, 'was brought in here (Alvarado) as a prize," &c. It is obvious that he means to speak of the event as just having come to his knowledge; and on the 9th January, his house (Taylor, Sicard, & Co.) wrote to the owner of the Susan, informing him of her arrival as a prize at Alvarado

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on the 3d day of that month. It is a clear inference from these letters that the arrival of the prize, as the Susan is called, afforded the first information of her capture, and that arrival was on the 3d of January. Alvarado is but a few miles distance from Vera Cruz, and between them there is a daily, I may say, an hourly intercourse. Merchandise for the latter place is often discharged at the former. I take it as a fact established by the proof, not as a presumption, that the knowledge of the capture was not known at Alvarado until the 3d of January, and from the proximity and intercourse between that place and Vera Cruz, could not have been known many hours before at Vera Cruz. It is clearly proved, and the Board so state it, that the Susan was captured on the *20th of December*. If in truth she was captured "near the Castle," she must have been captured in sight of Vera Cruz, and the fact of her capture must have been known that very day at Vera Cruz, and within a few hours thereafter at Alvarado. If taken immediately after capture to Sacrificios, which is within three or four miles of Vera Cruz, her capture must have been known at Vera Cruz and Alvarado certainly within twenty-four hours, yet it appears not to have been known until the 3d of January. Where was the Susan during the thirteen days from the 20th of December to the 3d of January, on which day she arrived at Alvarado, and when the fact of her capture was first made known at that place?

If it is answered, she was at Sacrificios, the reply is, if at Sacrificios, the knowledge of her capture must have been known as soon as the 21st of December to the American Consul at Vera Cruz, and to Taylor, Sicard, & Co.; and they would have sooner written, and written in a different manner, if they were speaking of a bygone event. Why should she have laid thirteen days, or even one day, at Sacrificios, when Alvarado, near by, was the place where prizes were sent, as appears it was in this and other cases? There is no other way of accounting for the non-arrival of the Susan at Alvarado until the 3d of January, and that the capture was not known there until that day, but the fact that she was captured "out at sea."

It seems to me that the two circumstances to which I allude support the position that she was out at sea when captured; and are utterly at war with the Board's position, that she was captured "near the Castle." In their account of the affair, the captors meant to state a case that would give plausibility to the condemnation, (if there was one;) they therefore use the vague terms, "off the Castle." If they had stated the true place or time, they would have defeated their own object. I cannot resist the conviction that there was an artful misrepresentation of the transaction by the captors, which deceived our Consul, (by whom the claimant was misled,) for the purposes of securing to themselves the fruits of a wrongful capture; and they will not have failed in their object, if the Board should hold on to their construction of the terms "off the Castle," means near the Castle. It is impossible to account for the lapse of thirteen days between the capture and the arrival of the Susan at Alvarado, if she was seized near the Castle; but if she was on her voyage, as the captain and supercargo state, *and out at sea*, there is no difficulty in the case. I still think, all things considered,

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that the testimony warrants the position in the former argument, that the capture was made out at sea.

The Board regard their position, that the capture was near the Castle, as strongly fortified by the consideration that it is an important fact for the claimant to show, that the Susan was captured out at sea, and therefore it was a fact he would have proved if it had been true. This is certainly unconclusive reasoning; the premises for the conclusion are wanting. In the view taken by the claimant and his counsel, nothing could be more immaterial than the place of capture. If there was not, and they solemnly believe there was not, an actual blockade—if it was understood (as it is proved) at New Orleans, that free trade was carried on with the Castle, (see the letter of the captain of the Scott)—how was the place of capture important?

It was as much the violation of neutral rights to capture her in the vicinity of the Castle, or under its guns, as it would have been to capture her in the middle of the Gulf, or at the mouth of the harbor from which she sailed. If there was no effective blockade, as the claimant certainly believed and still believes there was not, or if there had in reality been an effective blockade, and knowledge of it was not brought home to the owner or master, he was, by the law of nations, safe from legal capture anywhere and everywhere. It is the peculiar views of the Board in relation to the blockade, views never entertained by the claimant or his counsel, which make the place of capture at all material. The argument, therefore, that he did not render certain what was uncertain, but the certainty of which he thought immaterial, though in this respect the Board differ from him, is not entitled to the consideration given to it.

Having, as it is hoped, shown to the satisfaction of the Board that there was no blockade which the Susan or the Scott did or could violate, there remains another objection to the claim, which calls for a few remarks.

It is urged that the two schooners are implicated for violating a siege; the Board seem disposed to regard the Castle as a place in an actual state of siege, when the Susan was captured and the Scott fired on.

If the Susan was not near the Castle—a fact which I regard as well established—then it is very clear she cannot be implicated in the offence of attempting to violate a siege. The law referred to by the Board will not be questioned; but, as in the case of a blockade, there must be clear and certain proof of an actual siege, notice or knowledge of it brought home to the offending party, and also a well-authenticated act of assistance or attempted assistance to the besieged, should be proved upon the neutral.

The great and important fact of an actual siege of the Castle is denied. If Mexico did not see fit, or was not in a condition, to station a naval force about the Castle, which is entirely surrounded by water, and at too great distance from land to be much annoyed by batteries thereon, it is extremely improbable that it was besieged by a land force; and a siege of such a place, without a blockading force aiding in it, would have been ineffective and idle.

While the rights of Mexico as a besieging power are admitted, the fact of a siege is positively denied.

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This is too important a point to rest on mere presumption; for Mexico has not set up such pretension, and it should not be set up for her.

The importance to Mexico of cutting off supplies from the Castle, and thus compelling its surrender, is not any proof that she did this thing, or attempted to do it. For a long time after the Castle was held adversely to Mexico, there were no hostilities prosecuted against it. The decree of the 8th October, 1823, shows that, anterior to that time, a free and friendly intercourse was carried on between the Castle and Vera Cruz. Presas's deposition shows that, after that time, the same free and friendly intercourse existed between the two places; and the letter of the captain of the Scott says that trade was free to neutrals with the Castle, and that that fact was notorious at New Orleans.

But what is decisive as to this question of siege is, the letter of our Consul at Alvarado, written on the 5th January, 1825; the opening sentence of the extract furnished in this case is as follows:

"Hostilities have again commenced between San Juan d'Ulloa and Vera Cruz." If they then commenced, they did not exist before. The Susan was captured fourteen days before that on which these hostilities commenced, and the Scott was then at the Castle.

It may well be asked, when did the siege commence? What amount of force was employed in carrying it on? What one operation did the besieging force conduct against the place? To show that there was an actual siege, there should be clear proof on all these points; but there is none on either of them. The importance of a vigorous siege to Mexico, and the proof of one, are very different things.

No cruising force is shown or pretended at any time. Is there the slightest proof of any attempt to reduce the place by siege? The land batteries, it is true, fired at the schooner Scott, after she had been permitted freely to enter the waters of the Castle; but this will not, I trust, be construed into a besieging operation.

To constitute a siege, there must be a besieging force investing the place; there was none in this case—none pretended. There were probably a few troops in the forts, but that fact is not proved; but they had at no time operated against the Castle.

To use the language of Chancellor Kent as applied to blockade, which is not less applicable to a siege, "The presence of a *sufficient* 'force is *the natural criterion* by which the neutral is enabled to ascer-'tain the existence of the siege. The neutral looks only to the matter 'of fact."

There is no proof that any besieging force ever invested the Castle; that any annoyance was ever attempted, nor a battery raised against it; the land batteries were constructed undoubtedly for the defence and protection of the city of Vera Cruz.

Unless there can be an effective siege (which neutrals are bound to respect) without a besieging force, without manifestation of investment, the Castle cannot be regarded as in a state of siege. The presence of power in the besiegers is the only notice which neutrals are bound to respect. This is the true and only safe doctrine on the subject.

The undersigned cannot believe that the Board will feel authorized to sustain Mexico in seizing and converting to her use the Susan and Scott, and their cargoes, on the ground of an invisible and unproclaimed

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siege never existing. It really appears to me that this ground of defence is, if possible, more untenable than that which is based on the blockade, weak and worthless as I regard that to be.

I will close these remarks by apologizing for their great length. My confidence in the justice of this claim has strengthened by the additional consideration I have given to it. Though this confidence in itself should have no influence with the Board, it will, I trust, be received as an excuse for any expression which may have inadvertently escaped me, which may not be—as I intended they should be—perfectly respectful to the Commissioners, and for any additional trouble I may give them. I hope it may induce them to revise the proofs, and reconsider their own views and argument.

All which is respectfully submitted.

JAMES H. CAUSTEN.

WASHINGTON, *February* 10, 1851.

[A.]

From American State Papers, Gales and Seaton's reprint, Vol., 2, page 266.

NOTICES OF BLOCKADE.

Lord Grenville to Mr. King.

MARCH 22, 1799.

"The undersigned, Secretary of State of His Britanic Majesty, has received His Majesty's commands to acquaint Mr. King, Minister Plenipotentiary of the United States of America, that the King, judging it expedient to avail himself of the superiority of his naval forces for the defence of his dominions, has signified his commands to the Lords Commissioners of the Admiralty to cause the most rigorous blockade to be established at the entrance of all the ports of Holland, which will be maintained and enforced in the strictest manner, according to the usages of war, acknowledged and observed in similar cases.

Mr. King is therefore requested to apprize the American Consuls and merchants residing in England, that the above-mentioned ports of the United Provinces are and must be considered as being in a state of blockade, and that from this time no neutral vessels can be suffered to enter them, upon any consideration, or under any pretence whatever; and that all the measures authorized by the law of nations, and the respective treaties between His Majesty and the different neutral Powers, will henceforth be adopted and executed with respect to vessels destined for the said ports, or such as shall attempt to enter them after this notice. GRENVILLE."

Lord Grenville to Mr. King.

"The undersigned, Secretary of State, has received His Majesty's command to inform Mr. King, that His Majesty has judged it expedient to suspend for the present the blockade of all the ports in the United Provinces, which was established by His Majesty's orders, and which was announced to Mr. King by the undersigned, in his note dated March 22d last. GRENVILLE."

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Mr. Merry to Mr. Madison.

APRIL 12, 1804.

"Mr. Thornton not having failed to transmit to His Majesty's Government an account of the representation which you were pleased to address to him under date of the 27th of October, last year, respecting the blockade of the islands of Martinique and Guadaloupe, it is with great satisfaction, sir, that I have just received His Majesty's commands, signified to me by his principal Secretary of State for Foreign Affairs, under date of the 6th of January last, to communicate to you the instructions that have in consequence of your representation been sent to Commodore Hood and the Judges of the Vice Admiralty courts in the West Indies.

I have accordingly the honor to transmit to you, sir, enclosed, the copy of a letter from Sir Evans Nepeau, Secretary to the Board of Admiralty, to Mr. Hammond, specifying the nature of the instructions which have been given. His Majesty's Government doubt not that the promptitude which has been manifested in redressing the grievance complained of by the Government of the United States, will be considered by the latter as an additional evidence of His Majesty's constant and sincere desire to remove any ground of misunderstanding that could have a tendency to interrupt the harmony which so happily subsists between this Government and that of the United States.

ANTHONY MERRY."

[Extract from the enclosure.]

"Thereupon I have their Lordships' commands to acquaint you, for 'his Lordship's information, that they have sent orders to Commodore 'Hood not to consider any blockade of those islands as existing, unless 'in respect of particular ports which may be actually invested, and 'then not to capture vessels bound to such ports, unless they shall have 'previously been warned not to enter them."

MR. GAUSTEN'S ADDITIONAL ARGUMENT—SUSAN, SCOTT, &c.

[Filed March 12, 1851.]

The importance which the Board seem to attach to the facts, that the Susan was, as set forth by the captain's protest, bound for the Castle of San Juan d'Ulloa—that she anchored near to it—that she obtained a pilot from it—that the captain landed there and took off two launches, which were loaded from the schooner and taken to the Castle, all before the firing from the city batteries opened on her, go, as the remarks made by the Board seem to hold, to prove an *illicit* trade, induces me to submit to the Board the following brief remarks:

The facts above stated are all freely admitted; but that they go to prove illicit trade, a violation of blockade, or smuggling, is no less freely resisted.

The vessel had cleared out at Baltimore for the Gulf of Mexico, which of itself indicated an intention to go to any port she might desire

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within the Gulf, or even elsewhere, including the Castle of San Juan d'Ulloa; which, according to the proof before the Board, was regarded at New Orleans (and doubtless also at Baltimore) as open to our commerce; and the probability is that she intended to trade at both places stopping first at the Castle to sell her provisions, and then proceed to Vera Cruz to sell her fine dry goods. If the master, to whose discretion the selection of a port or ports seem to have been confided, *supposed* he had a right to trade at the Castle, or in fact had such legal right, (as the argument filed on yesterday, in the judgment of the undersigned, fully established,) then his going there was clearly *no intention* to do wrong; nor can it be regarded as wrong in fact or in law, until this honorable Board shall have so decided, after full consideration of the proofs, the argument, and the laws, in connection with the existing circumstances of the case.

The mere fact of clearing for one port and sailing to another port, which is practiced every day, is fully sanctioned both by common usage and by law. No vessel is bound to go at all to the particular port for which she clears out; merchants resort to such disguised or masked voyages for the purpose of preventing a competition injurious to the adventure they aim to make profitable by secrecy; and no one dreams of imputing to them, nor does the law, any *intention* to do wrong; there was therefore no moral wrong in trading with the Castle. And the question, whether *it was wrong* in the view of any existing *law*, has been raised and answered heretofore, and now awaits the decision of the Board; and it is not my purpose to disturb that question and answer at this time.

That the Susan ran boldly into the harbor, and anchored under the guns of both the city and the Castle, is manifest proof that she did not intend to do wrong to either, and therefore entertained no fear of injury from either; her innocence was relied on, but it was wantonly abused.

The idea that first met my ear on yesterday, that goods were often landed at the Castle for the purpose of being smuggled into Vera Cruz, may be true; and if true, it shows that supplies for the Castle from Vera Cruz would necessarily follow, (even if not obtained from thence openly, as has been proved,) and the result would be a *quasi peace* and no *blockade*.

To the honorable the Board of Commissioners on Claims against Mexico.

IN THE MATTER OF THE CLAIMS FOR THE SCHOONERS SUSAN AND SCOTT, AND THEIR CARGOES.

I fear I should go beyond allowable limits, if I should presume to enter into a further discussion of the general merits of these claims, though I am constrained to say there are many positions laid down by the Board, in regard to the law of blockade, and its application to the facts in the two cases, in which I am unable to concur; but in regard to the facts introduced by the Board, upon which they place some of their strongest objections to these claims—being first brought to notice

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in their written opinion—I trust I may be allowed to make a brief comment:

"The law of blockade," as Chancellor Kent observes, is "a *harsh and severe law* in its operation" towards neutrals; they ought not therefore to be involved in its penalties by a latitude of construction and forced inferences from the facts; its application is not to be favored in that way. This is the established doctrine in relation to penal laws; and that of blockade is highly so. The fact of an actual blockade, as well as that of notice to the party charged with violating it, must be established, as the same writer says, "by *clear* and *unequivocal* evidence."

It appears to me, and I say it with sincere respect, that the Board have not, in the view they have taken of these cases, given the claimant the benefit of these rules of law.

These new facts take away the grounds of some of the inferences drawn by the Board. By the fair use of them, and with the benefit of the well-established principles of the law of blockade applied to them, the claim in both cases is, in my opinion, well made out.

The consideration of the cases which I now ask is confined to that part of it only which is affected by these new facts.

I perceive nothing in the decision of the Board to counteract these two positions:

1st. That if there was not an actual subsisting blockade of the Castle at the time of the captures of these vessels, then the claims for them are well established; and

2d. That if, in truth, there was an actual blockade at that time, but these vessels were not notified of it in the way required by the law of nations, they did not incur the penalty of confiscation.

I understand the Commissioners to admit, though not in explicit terms, that on the proof submitted by the claimant that thecases were made out, or rather would be made out, if it had been a trial between individuals; but they require more than a *prima facie* case.

If the argument of the counsel assumes what the Board says it seems to assume, "that the Board are confined to the proofs which are presented *by the claimant himself*," it certainly assumes what was not intended; and it is not doing justice to the capacity of the counsel, humble as it may be, to suppose he would present such a proposition to a Board so intelligent and so capable of detecting its unsoundness, unless his language has that unequivocal import. The proposition in the argument, which may have been mistaken for that above stated, is, that the claim ought to rest on the proofs, not on those presented by the claimant only—on all the proofs; and that these proofs ought not to be counteracted or overborne by presumptions, or the assumption of facts not proved. The argument contends that where there is no proof of a court with or without jurisdiction—of a condemnation with or without cause—the Board ought not to assume there was a court, that it had jurisdiction, that it did pronounce a decree of condemnation in the regular course of proceedings, and that it had a just cause for that decree.

But this argument is not, it seems, regarded by the Board as sound. Another position contended for in the argument was, that the proof of

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a proclamation of a blockade was not proof of an actual blockade, nor was it a legal ground of the inference of an actual blockade.

The first opinion given against the claim for the Susan rested, as it was conceived, upon this assumption, and others that appeared even less plausible, as there was no direct, nor indeed indirect, proof of any actual investment of the Castle.

By a subsequent decision in the Scott's case, the latitude of presumption seems to be a little circumscribed; and the Board have produced, what it was certainly proper they should do, proof which has satisfied them there was an actual investment of the Castle of San Juan de Ulloa. Upon this proof, as it is new, and now first brought to notice in this decision, the counsel for the claimant thinks he has a right to comment, and he does not doubt the Board will give him a favorable hearing.

The first part of the new evidence which I shall comment on is Santa Anna's plans for reducing the Castle, as disclosed by Mr. Poinsett. These plans were—1st. To blockade the Castle by water. 2d. To construct a battery on each extremity of the harbor, to prevent the entrance of shipping. And 3d. To place batteries behind the city, to throw shells into it. "These plans (say the Board) seem to have been carried into execution."

I must say that I can find evidence to establish the assertion to a limited extent only. As to one of them—a range of mortar batteries behind the city of Vera Cruz—I have not been able to find anywhere a particle of evidence that it was ever attempted to be executed. If they had batteries at the extremities of the harbor of Vera Cruz, they did not use them for the purpose indicated by Santa Anna.

If the batteries projected by Santa Anna to prevent the entrance of shipping into the harbor were actually constructed, manned, and ready to execute the designed purpose, how did it happen that the Scott sailed into the harbor in open broad day, immediately under their guns, without drawing a fire from one of them? If the Castle was blockaded by a competent force, or any force, how did it happen that she slowly and deliberately proceeded to the vicinity of the Castle, without the slightest interference from that force? Her entrance was not stealthy, or made under circumstances calculated to elude the vigilance of the blockaders. The time and circumstances are stated with great particularity, and, for aught that appears, with perfect accuracy, in the protest. The following is the detail of them:

At half-past three o'clock, she came in sight of the Castle; at half-past four, got a pilot from the Castle; and twenty minutes after five, came to anchor. After that, she got out her boat, and the captain went on shore in it; at forty minutes past six, the boat returned with two launches from the Castle for the cargo; these launches were loaded, and sent on shore.

Not until all this was done was there a gun fired from the battery on shore.

This conduct on the part of the Mexicans is utterly inconsistent with the assumption of the Board, that the Castle was at this time actually blockaded and besieged.

If, in fact, there was a present blockading force by water, if the

batteries on land were devoted to the seige, why was the Scott permitted to approach the Castle leisurely in the early part of the afternoon, to get a pilot from it, to pass the batteries which commanded the harbor, to anchor in the vicinity of that fortress, lade from her cargo two launches, and send them on shore, without interruption, and before the smallest intimation from the Mexican authorities that her conduct was illegal and improper?

Another fact which appears in the proofs, (see the Protest, Doc. No. 6,) but which must have escaped the Board's notice, is also utterly inconsistent with the assumption of an actual blockade when the Scott entered the harbor. After discharging her cargo—after being raised (for she was sunk by the Mexicans) by assistance of the garrison—her damages repaired, and she fitted for sea—all done under the eyes of the Mexicans—she sailed from the Castle on the 19th of February, on her voyage to New Orleans, without the slightest molestation from the imagined besieging or blockading force. The leaving of a blockaded port is as much a violation of the blockade as the entering into it. (1*st Kent's Com.*, 146.)

These facts are more than sufficient to destroy the presumption so slightly countenanced by the other proofs, but entertained by the Board, that the Castle was blockaded when the Scott visited it and the Susan was captured.

But as this presumption of an actual blockade, which, in my view of it, is no better than an uncertain conjecture, is to be set up against the claims for the Susan and the Scott, I shall proceed to show that even then they were not condemnable, as the proof now stands, under the law of nations.

One of the inferences which sustained the views taken at first by the Board against these claims, and without which their conclusion could not have been arrived at, is completely destroyed by the new proof they have introduced. That assumption is, that there had been an actual blockade of the Castle continuously kept up since the proclamation of the 8th of October, 1823. In the former argument for the claimant, this was denied, because it was not proved; but the Board clung to it, because it was not disproved.

It is now, however, disproved by the authority introduced by the Board itself. Speaking of the state of things as they existed on the 11th of March, 1825, Mr. Ward says, in the extract introduced into the decision of the Board:

"*The Castle was occasionally* supplied with fresh provisions by the Spanish flotilla from the Havana." (Vol. 2, page 69.) And on the same page it is stated that "the island of Sacrificios" "had been con-'verted into a regular fortification, *under which the Mexican gun-'boats sought protection on the approach of the Spanish fleet.*"

I feel warranted in asserting, and I am sustained in the assertion by the authority of judicial decisions which will not be controverted, that the proof shows that the blockade (supposing it ever existed as a legal blockade) was raised, and, in consequence thereof, neutral vessels had a perfect right to trade with the Castle.

I perceive, and much regret it is so, that the Board take a different view of the law of blockade, and particularly of the doctrine of no-

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tice to neutrals, from that which I have gathered from the books and decisions on the subject; and I therefore feel it to be my duty to refer to some authorities that will, I think, correct the error, on whichever side it may be.

The Board have presumed an actual blockade simultaneously with the decree of the 8th of October, 1823. In this, I think they have erred; but, for the argument, assume it to be correct. As soon as a Spanish force competent to drive away the Mexican blockading force appeared, and did drive it away, the blockade was terminated, and neutral vessels might thereafter with impunity directly trade with the Castle. This position is supported by the very best authorities; they are carefully analyzed, and the doctrine thus stated by Chancellor Kent. (1 *Com.*, 146.)

"But if the blockade be raised by the enemy, or by applying the 'naval force, or part of it, though only for a short time, to other objects, 'or by the mere remissness of the cruisers, the commerce of neutrals 'to the place ought to be free." (Authorities: 2*d Caines*, 1; *Letter of the Secretary of State to Mr. King, Sept.* 20, 1799; 6 *Rob.*, 112.)

Again he says, on the same page:

"When a blockade is raised voluntarily or by a superior force, it 'puts an end to it absolutely; and if it be resumed, neutrals must be 'charged with notice *de novo*, and without reference to the former state 'of things, before they can be involved in the guilt of a violation of 'the blockade."

The blockade proclaimed in the decree of the 8th of October, 1823, was raised by the Spanish fleet from the Havana; the gun-boats, the only maritime force that is proved ever to have been stationed and present about the Castle, (all the authorities say there must be ships,) fled for protection behind the fortified island of Sacrificios; and the garrison in the fortress was relieved by that fleet, which was, of course, superior to the blockading force—so states Mr. Ward. This was a superior force, whose visits to the Castle evidently were often repeated, to supply the garrison with provisions, which the Mexican force, whatever it was, could not prevent; nor does it appear it ever attempted to prevent. On the approach of the Spanish flotilla, it did not offer resistance, but fled to its fortified protection behind Sacrificios.

This, to use the language of Chancellor Kent, "*put an end to the blockade absolutely.*" What was the right of neutrals thereafter? It was unrestricted liberty to trade freely with the Castle until the blockade was resumed; and what was equally necessary and important, until the neutrals were "*charged with notice de novo, without reference to the former state of things.*" This is the unquestionable law on the subject.

When was the blockade of the Castle, which is proved to have been raised, resumed, and such notice given to neutrals? This is left altogether to conjecture; but the fact of resumption and notice, neither of them proved, must be assumed, to make out the show of a defence to the claim under consideration.

It is not unreasonable to surmise that, on the retirement of the Spanish fleet, the gun-boats may have come out from their hiding-place, and

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taken a station about the Castle; but this *per se* is not a blockade which affects neutral rights. There must be, besides the resumption of the blockade by a force "fully competent to cut off all communication" with it, as Chancellor Kent says, "a notice *de novo*, and without reference to the former state of things, before they [neutrals] can be involved in the guilt of a violation of it."

Public transactions are regarded as proofs in such a case, and may be resorted to as evidence for the claims as well as against them. It is well known that after the proclamation of the decree of the 8th of October, 1823, down to December, 1825, when the Castle was surrendered to the Mexicans, a space of more than two years, it was supplied with provisions and munitions of war by the Spanish fleet, or from on shore at Vera Cruz. If supplied from on shore by the permission or connivance of Mexico, or in her inability to prevent it, that in itself was a renunciation of the blockade; and it could not be resumed so as to affect the rights of neutrals without a new notice to them; if supplied from the Spanish fleet, that also put an end "*absolulely*" to the blockade.

The visits of the fleet to the Castle were, as Mr. Ward says, occasional, that is, repeated; and whenever they happened, all pretence of a blockade was at once ended. Until another was instituted by an investing force, and a new notice given, *neutrals* could rightfully trade with the Castle as freely as if it had never been in a state of blockade.

The doctrine in regard to notice is thus laid down by Chancellor Kent, (1 Com., 147):

"It is absolutely necessary that the neutral should have had due 'notice of the blockade, in order to affect him with the penal conse-'quences of a violation of it. This information may be communicated 'to him in two ways: either actually or by a formal notice from the 'blockading power," (there is no pretence that such a notice was given 'to the Susan or the Scott;) "or constructively, by notice to his Gov-'ernment, or by the notoriety of the fact."

There is no proof or pretence that any notice of a blockade—of the original blockade or any of the resumed ones—(if they ever existed,) was given to our Government, to act constructively upon our merchants.

But the position of the Board is, that the notoriety of the blockade of the Castle was such as to be constructive or implied notice to all neutral merchants, and of course to the owners of the vessels in question. I beg that this proposition may be critically considered, for it is one of the main points of divergence in the arguments for and against the claims herein discussed. Evidently, the notoriety which, in the view of the Board, should have arrested the intention of our merchants, had relation exclusively to the blockade proclaimed in the decree of the 8th of October, 1823; but that blockade ceased, and, to reiterate the language of Chancellor Kent, an "*an end was put to it absolutely*" by the first visit of the Spanish fleet to the Castle.

By that event the neutral merchants were remitted to the same state in regard to trade with the Castle in which they would have been if there had been no previous blockade, no proclamation, no notice of it whatever. Everything was to be begun *de novo*.

But it may be said the blockade was afterwards resumed. For the

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sake of argument, let that be granted. The resumption was a new blockade; and what notice or notoriety was given to it? The law requires a notice to be given "*de novo*," and *without reference to the former state of things.*"

If the blockade was in fact resumed, that was also raised on the return of the Spanish fleet; and if resumed again, that was the third blockade, and neutrals were entitled to another "notice *de novo*, without reference to the former state of things, *before they can be involved in the guilt of violating it.*"

It is certain that the first blockade was raised by the Spanish fleet. Mr. Ward's book places that fact beyond controversy. And if it was resumed again, the evidence shows that it was raised again by that fleet.

If it is assumed that there was an actual blockade when the Susan was captured and the Scott damaged, no one can tell when it commenced; but it must have been subsequent to the last visit of the Spanish fleet to the Castle; and it would be carrying presumption beyond all allowable limits to suppose that there was any notice of it or notoriety, which on legal principles could implicate either the Susan or the Scott in the guilt of violating it.

The rule of law which I ask may be applied to this case is essential to the protection of neutral commerce, but at the same time it respects and upholds belligerent rights to the full extent conceded by the law of nations. Neither sound policy or justice will tolerate the extension of these rights beyond the limits clearly marked by admiralty decisions and jurists of the most approved authority.

"The law of blockade," as Chancellor Kent observes, (1 Com., 144,) "is, however, so harsh and severe in its operation, that in order to apply it, the fact of the *actual blockade* must be established by *clear* and *unequivocal evidence;* and the neutral must have had *due previous* notice of its existence; and the squadron allotted for the purposes of its execution must be fully competent to cut off all communication with the interdicted place or port; and the neutral must have been guilty of some act of violation, either by going in, or attempting to enter, or by coming out with a cargo laden after the commencement of the blockade. The failures of either of the points requisite to establish the existence of a legal blockade amounts to an entire defeasance of the measure, even though the notification of the blockade had issued from the authority of the Government itself."

Claimants have a right to resist presumptions pushed beyond what the evidence clearly and unequivocally warrants, in order to give effect to this harsh and severe law.

The first proclaimed blockade having ceased, and the notice and notoriety of it become ineffective, it will be impossible, as I think, to find any proof in this case, or in the character of public events, to sustain a presumption of due notice or notoriety of any succeeding actual blockade, and particularly that which is presumed to have existed when the Susan and the Scott left their respective ports in the United States.

Even the Mexican Government itself was conscious that there was nothing in the state of things in regard to the blockade of the Castle which could fairly involve neutrals in penalties for trading with it at

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that time; for, on the 14th of December, 1824, it declared at Mexico the continuance of the blockade established by the decree of October 8, 1823. Why did Mexico issue the latter decree, if she believed that there was then an effective blockade under the first decree, which would involve neutral commerce with the Castle in the penalties of confiscation? If the first had not been raised or relaxed, it was a nugatory act. But she must have known—and the second decree is a distint acknowledgment of the fact—that without such new notice, neutral commerce with the Castle could be carried on with impunity. She was undoubtedly well aware that the old blockade had been raised, and that neutrals were not obliged to respect it. Hence the cause and the necessity of that second decree. It was a notice of a new blockade.

Of that new notice, neither the Susan or the Scott can by any stretch of presumption be charged with knowledge; and it is only by such notice brought home to them, that either could be involved in the penalty of confiscation. They both sailed before this decree was issued; and the Susan was captured the same day it was promulgated at Vera Cruz.

Assuming there was at that time an actual and effective blockade, neither of these vessels had actual or constructive notice of it, and could not be *in delicto* until they had such notice, and by some unequivocal act had shown an intention to disregard the warning given to them. The law, as correctly stated by this Board in the case of the Julius Cæsar and Louisiana, sustains this position.

There is a remark in the opinion of the Board which imports that they regard the notoriety of "*the efforts and preparations* on the part of Mexico" to reduce the Castle, as tantamount to an actual blockade, and due notice of it; and, consequently, that the property of whoever undertook thereafter to trade with it was involved in the hazard of loss.

In regard to this position, I shall only say it is to me a novel principle, and, to my mind, as unsound as it is novel. I have never found any trace of it in any report, or any treatise on the subject; it subverts the doctrine of Chancellor Kent, and the cases he refers to; and goes far to make a state of war a prohibition of neutral commerce with either belligerent.

A brief notice of the inference of the Board, drawn from an expression in the policy of insurance on the Constitution and her cargo, in support of the ground assumed, that there was an actual blockade of the Castle, and that it was notorious in New Orleans when that vessel sailed, will close my remarks. The expression is not taken from the policies, but from the report of the remarks of the court in the suit upon them. Assuming its accuracy, it does not, in my opinion, uphold the inference drawn from it. The sentence quoted is as follows:

"Both vessel and goods are warranted American, and that the former 'shall not force the blockade."

I should understand it to mean the blockade of any place, and it is probable it was so expressed in the policies.

The introduction of the expression into the policies can be accounted for in a more reasonable way than that assigned by the Commissioners. Why is it construed to have reference to the blockade of the Castle? The voyage insured is to Vera Cruz, and no mention of or allusion to

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the Castle is found, and ought not to be presumed. It was known at New Orleans, at the date of the policies, that Spain had a fleet at the Havana which often visited the Castle; and when it did so, the Mexican maritime force fled from it, and sought protection under the batteries on Sacrificios. The insurers undoubtedly thought, that when the Constitution arrived, it might be found that the Spanish fleet—as it was competent to do so—was blockading the port of Vera Cruz, for which port the schooner was cleared, and therefore required a warranty against forcing the blockade. This is certainly the more probable conjecture; and to show that this is not a mere conjecture now resorted to in order to escape from the inference of the Board, but was a widespread apprehension at that time, I refer to the case of the brig James & Mary, Morgan master. (See the United States Consul's letter of July 10, 1824, to the Secretary of State, on the consular files of the Board for Alvarado and Vera Cruz, No. 127.) That vessel sailed from Gibraltar for Vera Cruz; but apprehending that the port of Vera Cruz might be blockaded by the Spanish fleet, she went first to Alvarado to inquire into that fact.

But I am not only willing but desirous that the Board should take the opinion of the insurance companies in New Orleans; and the very one they have referred to, the Louisiana State Insurance Company, on the very point to which they refer, viz: the notoriety of the blockade of the Castle at New Orleans.

The *departure* of a neutral vessel from a blockaded port, (unless the vessel was in it, and laden at the time the blockade was instituted,) is as clearly a violation of that blockade as the *entrance* into the port.

"The object of a blockade (says Chancellor Kent, 1 Com., 146) is 'not merely to prevent the importation of supplies, but to prevent ex-'port as well as import, and to cut off all communication of commerce 'with the blockaded port."

If the Castle was known at New Orleans to be in a state of blockade, it is a fair inference that an insurance company there would not insure at all—certainly not at the ordinary rate—a vessel and cargo from the Castle; for the risk of insuring a vessel from a blockaded port is as great as insuring one to a blockaded port.

Anticipating the safe arrival of the Susan at the Castle, and fearing no obstruction to the landing of her cargo and taking in a return cargo there, the claimant in these cases, on the 6th of December, 1824, effected insurance on her anticipated return cargo, by the Louisiana State Insurance Company, "at and from the Castle of San Juan d'Ulloa to New Orleans, with liberty to touch at Laguna." And on the 17th of August, 1824, the Louisiana Insurance Company insured the claimant on the cargo of the schooner "Sterling," "at and from the Castle of San Juan d'Ulloa to New Orleans." (See the accompanying policies, numbered 10.) These two policies are found among the papers of the claimant in the two cases under consideration; and it is fair to presume that many similar ones were issued by these and other companies to other merchants.

Lest it should be presumed that these were extraordinary risks on account of the supposed blockade, I will repel that inference.

Document No. 7, among the proofs in the case of the Scott, shows

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that the ordinary rates of insurance at New Orleans, on vessels and cargoes to Mexican ports, in the years 1822, 1823, 1824, and 1825, were from *two* to *five* per cent. It appears by the policy on the Susan's anticipated return cargo from the Castle, that the charged rate of insurance was *two* per cent., or one and a half per cent only, if Laguna be not used; and that on the Sterling's cargo, *one and a half*. Thus it is proved that these insurances were not for extraordinary risks, but the very lowest rate charged on a voyage to or from any Mexican port. If it was notorious at New Orleans, as the Board assume, that the Castle was in a state of blockade, would these companies have ventured upon these risks? Would they, as one of them did, insure at the lowest ordinary rate, and the other below the lowest ordinary rate, on a voyage which could not have been made without *forcing a blockade?* Such folly cannot be reasonably imputed to them; and is only imputable to them upon the unwarranted assumption that they knew the Castle was in a state of blockade. Their acts in the two cases referred to—and doubtless there are many similar ones—prove, as I think, conclusively, that neither company knew or even suspected that the Castle was blockaded. Upon this proof, I am quite confident the Board will at once abandon the presumption so prominently put forth in their opinion, that it was notorious at New Orleans, and other places in the United States, that the Castle of San Juan d'Ulloa was blockaded when the Susan and the Scott sailed for Mexico.

If the Castle was blockaded about that time—a fact assumed, but not proved, and indeed improbable by the unobstructed entrance of the Scott, and still more so by these acts of the insurance companies—the blockade must have had its beginning after the last visit of the Spanish fleet; of that blockade no notice was given to the Susan and the Scott, and there was no notoriety of it, on which a presumption of notice could be fairly founded. There is therefore no ground for charging them with the offence of violating a blockade.

The new testimony has confirmed my original views of the merits of these claims; and as it removes the foundation on which some of the main positions of the Board rested, I entertain the hope that it will conduct them to a different conclusion from that to which they have arrived.

My entire confidence in the fairness and justness of these claims, after a full and respectful consideration of all which has been urged against them, is my only apology for this long communication.

All which is respectfully submitted.

JAMES H. CAUSTEN.

WASHINGTON, *March* 27, 1851.

[Submitted with the above to the Board, five original policies of insurance, and sundry consular letters.—J. H. C.]

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SCHOONER CONSTITUTION:

CASSAIGNEAU, MASTER; JAMES W. ZACHARIE, ASSIGNEE OF FRANCOIS CHETI, AND RE-AFFIRMED BY DOMINIQUE PESTALOZZA, ADM. OF FRANCOIS CHETI, CLAIMANT.

STATEMENT OF THE CASE.

This vessel, with a lawful cargo of provisions, sailed from New Orleans for Vera Cruz, on the 25th of June, 1824, and while on the voyage, to wit: on the 7th day of July following, was captured at sea by the Mexican national schooner of war "Iquala," and sent as a prize into the port of Alvarado, on the alleged ground of "a suspicious appearance"—the officers and crew being removed to the captor.

She arrived at Alvarado on the 10th of July, 1824, and on the same day a military court, without a monition or notice of any kind, and in the absence of the captain or any one to defend him, ex parte and in conclave, proceeded to a mock trial, and forthwith decided the vessel and cargo to be "good prize."

This drum-head court martial, assembled at the dwelling house of the Commandant of the Department, who presided, viz:

The Captain de Fragata, Don Jose Maria Fosta.
The First Lieutenant, Don Roque Martinez.
The First Lieutenant, Don Francisco de Paula Lopez.
The principal western Accountant, Don Manuel Fernandez de Castro.
The Second Lieutenant, Don Juan Nunez.
The Orderly Officer and Secretary, Don Francisco Garcia.

It is noted in the Expediente (see page 15 of the translation,) "The Auditor not concurring therein, there being none in the Department, nor any lawyer in the vicinity of this town." It is further noted in the Expediente, (page 17 of the translation,) that Don Francisco Garcia, the orderly officer and seceretary as aboved named and described, was the gunner of the capturing vessel, and that he was very sick on the 9th of July, (the day preceding said assemblage,) and it is presumed did not attend that meeting, though he is named as one of the members present. Be that as it may, however, this military court decided the case forthwith, and in the following manner. Their decision runs thus:

".There having been examined by the members of the Junta, the 'proceedings and accompanying documents, [which are not described,] 'upon the detention of the N. American schooner named the Constitu- 'tion, by the sloop of war Iquala, in the waters of Vera Cruz; after de- 'liberate examination, they inferred that by the direction of the vessel, 'and her cargo of provisions, she could not be coming to any of our 'ports, since the hogs, chickens, charcoal, and onions, are articles ab- 'solutely unsaleable therein, as they are abundant, and only so in the 'fortress of Ulloa, which is in a state of effective and rigorous blockade,

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declared by the Supreme Government in the first article of its decree ‘ of the 8th of October of last year, [1823;] in view of which they unan- ‘ imously agree to the following articles :

“ 1st. That all the cargo of the said schooner Constitution is declared ‘ good prize, since these provisions were intended for the Castle of Ulloa.

“ 2d. The said schooner Constitution is also declared good prize, for ‘ sailing without a license, [register,] in conformity with the prescript of ‘ the 27th article of the cruising ordinance.

“3d. That this Expediente be sent to the Auditor, that he may be ‘ pleased to give his opinion.”

On the 9th of August, 1824, the owner, Francois Cheti, abandoned the vessel and cargo to the Mexican Government, under protest.

On the 11th, 12th, and 13th of August, the cargo was sold by order of the principal Commandant; and on the 30th of September, 1824, the vessel was sold by consent of parties, and at the instance of the owner, to prevent her destruction by the worms.

The sale of the vessel and cargo being completed, the “ Junta” or military court again assembled on the 23d of December, 1824, at the dwelling of the Commandant-in-Chief of the Department—the meeting being held at night, viz:

The Captain of the Navy, Don Jose Maria Fosta.
The Captain of the Navy, Don Pedrò Baranda.
First Lieutenant, Don Roque Martinez.
The principal Contada, Don Rafael Gomez.
The ordinary Engineer of the Department, Don Jose Amorga.
The Orderly Officer and First Lieutenant, Don Francisco Garcia.
Doctor, Don Carlos Hernandez Barratia.
The Secretary ad interim, Don Jose Cayetano Allegre.

And decided as follows, forthwith—ex parte and in conclave:

“ The Junta unanimously by vote sentenced the schooner Constitu- ‘ tion and all her cargo to be good prize, for the same reasons brought ‘ forward in the declaration of the said Junta of the 10th of July last, ‘ which is confirmed in all its parts; and in consequence let notice ‘ thereof be given to the parties, and let the distribution be made ac- ‘ cording to the ordinance, first deducting the duties of the public Treas- ‘ ury and the costs of the suit.”

The Cousul of the United States, acting in his official capacity, on the 3d of January, 1825, took an appeal* from said decision, to the Supreme Tribunal of War and Marine in the city of Mexico; before which tribunal our Consul complained of the irregular and unlawful proceedidgs of the Junta, or military court, at Alvarado, and *maintained* that, by the articles 12 to 17 of the cruising ordinance of June

* So called, but manifestly a mere *protest;* since, by the laws of Mexico, an appeal could not be taken up from that “Junta.” An appeal could no otherwise be taken up than from an intervening tribunal and on a contradictory suit—which the Mexican officials, for their own purpose, (evidently to prevent an examination of the merits of the claim and of their own conduct,) chose wholly to omit. And as the time had long elapsed within which such contradictory suit could be instituted, so it was utterly impossible for an appeal thereafter to be taken or prosecuted, or any further proceedings had. An abandonment and protest alone remained to the claimant and his Government.

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20, 1801, prizes shall be determined by summary, sentence pronounced within twenty-four hours—that a *contradictory suit* shall be determined within fifteen days—and that from this *second suit only* an appeal may be taken to the Supreme Tribunal of War—that these two propositions are indispensable—and that the assistance of an Auditor (who is rigorously a counsellor,) is indispensable in both of them; and he therefore prayed that the case may be sent back, in order that the irregular proceedings may be so far corrected by a contradictory suit or otherwise.

And the Consul refused to plead to the merits of the appeal until the proceedings below were corrected; the court sustained this position of the Consul, and thereupon sent the case back for correction; all the proceedings being declared irregular.

But the law having prescribed that a contradictory suit shall be determined within fifteen days after the arrival of the prize in port, and more than eighteen months had already elapsed, so that it was utterly impossible that a contradictory suit could be instituted; and, besides, the vessel and cargo had been sold, and the money ordered to be distributed, and was then in the hands of the Mexican officials, from whose grasp no human effort could extricate it; while to pursue it further, would only involve the owner in increased expenditure, and he was already exhausted. For these reasons, no further proceedings were had by him; he had already abandoned the property under protest, and could do nothing more.

This was a capture at sea; and before the vessel had come within the jurisdiction of Mexico, civil or maritime, she was captured by a national armed vessel belonging to Mexico, called the "Iquala," sent as a prize to Alvarado, and there immediately condemned as a good prize by an assemblage of persons assuming to be a "Junta," the vessel and cargo sold, and the proceeds distributed. The facts in the case show that the whole proceedings, and the assigned causes for the condemnation, were a flagrant violation and outrage upon neutral rights.

The first ground taken in support of the claim is, that the condemnation was not pronounced by a *court of competent jurisdiction*, nor indeed by any court. Those who assumed to act as a court were an assemblage of officials, mostly military officers, some of whom were of inferior grade. They were attended by no Assessor, who is always regarded as a necessary officer of a court according to the laws of Mexico, and whose proper function is to direct the court in regard to the law. There was not such an officer nor a lawyer in the Department.

This proceeding took place in that stage of the revolution in Mexico when all order was subverted, and the utmost confusion prevailed. The Spanish authority had been swept away, but that of the revolutionists had not been established. Something like a regular organization of a civil government was instituted shortly thereafter. Within six months after this extraordinary proceeding, efforts were made to organize a regular Government.

The first Congress met on the 1st of January, 1825. In the preceding December, General Victoria was elected President. In his inaugural, he states:

"The federal judiciary not existing, and the Government being pre-
'cluded from the intervention which it formerly had in that of the

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'ancient Provinces, its action, in this respect, has been almost null, 'and will be so until the Supreme Court be instituted by a law desig-'nating the number and local relations of the district and circuit judges, 'and prescribing rules for territorial tribunals and the federal district." (See Niles' Register, vol. 28, p. 126.)

This undoubtedly has reference to the state of things as they existed a few months previous, when the proceedings were had against the schooner Constitution and her cargo. It cannot be that persons holding the official positions represented as appertaining to those who acted in the condemnation of that vessel could have been a regularly constituted court. They were unquestionably a voluntary association—a self-constituted tribunal—which banded together for the purpose of plunder; and the forms of judicial proceedings were only resorted to in order to disguise the outrage. Without laboring this point, the undersigned thinks he has just grounds for urging that the Constitution and her cargo were not condemned by a court of *competent jurisdiction*. However valid may be the cause for condemnation, unless it be pronounced by such a court, it cannot be interposed in resistance to the claim of the original owner of the property. This doctrine is so well known and recognised, that it is not deemed necessary to refer to decisions of courts to sustain it.

But if the persons who pronounced this condemnation had been the most regularly-constituted tribunal that ever existed, and if their proceedings had been conducted in due form of law, the reclamation in this case would not be thereby impaired. Most of the claims which the citizens of this country have had against other nations were for the decisions of regularly-constituted tribunals in derogation of neutral right, but authorized by municipal laws. The courts of France acted upon the Imperial decrees; their authority as courts were derived from those decrees, and the regularity of their proceedings could not be impeached; but their decisions were in derogation of neutral rights, and therefore indemnity for the wrongs resulting from these proceedings was rightfully demanded and justly allowed. So also in regard to the British Orders in Council of an earlier date: they authorized the admiralty courts of England to pronounce sentence of condemnation against the rights of neutrals. Many of the claims for which indemnity has been allowed against Mexico were asserted and sustained in opposition to the decisions of her tribunals.

The claimant is not answered by saying that a Mexican court has pronounced that his property was rightfully seized. It must further appear that there was just, legal cause for the seizure of the property—legal not according to Mexican law, but legal in respect to neutral or belligerent rights—legal in respect to international law.

A nation, through her tribunals, as well as by any other of her officials, may do injustice to the citizens of other countries; and if so, she must answer to the injured party. It is not believed that these positions will be questioned; and if the undersigned shall show to the Board, as he does not doubt he can, that in this case there was no just or legal cause, no respectable pretext for condemning the schooner Constitution and her cargo, the claimant will undoubtedly have a favorable award, whatever may be their opinion of the competence of the Alvarado court to act in the matter.

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The confiscation of the vessel and the cargo was put on different grounds, and it will therefore be necessary to consider them separately.

First, as to the cargo. Its principal article in value was wine. In the captain's deposition it is (probably by mistake) called *Spanish* wine; but by the Mexican officials, and in the records of the proceedings throughout, it is called, what it truly was, *French wine*. No pretence was set up by the captors or the court, that this part of the cargo, or any other, were prohibited articles. It was not questioned, nor could it be, that every parcel of the cargo was such as the then existing laws of Mexico permitted a neutral trader to introduce into any of her ports. The sole grounds of condemnation, as stated in the expediente, are: "After deliberate examination, they [the court, if it is entitled to that designation] *inferred* that, by the direction of the vessel and her cargo 'of provisions, she could not be coming to any of our ports, since the 'hogs, chickens, charcoal, and onions, are articles absolutely unsale-'able therein, as they are abundant, and only so in the fortress of Ul-'loa, which is in a state of effective and rigorous blockade, declared by 'the Supreme Government in the 1st article of its decree of the 8th 'October, of last year; in view of which, they unanimously agree to the 'following articles:

"1st. That all the cargo of the said schooner Constitution is de-'clared good prize, since these provisions are intended for the Castle of 'Ulloa.

"2d. That said schooner Constitution is also declared good prize for 'sailing without *a license*, in conformity with the prescript of the 27th 'article of the cruising ordinance."

A slight examination of this irregular sentence of condemnation will show its true character. The interference of these condemners, (whom the undersigned will, for the sake of brevity, call a *court*, though he does not believe they are entitled to so honorable an appellation,) that the cargo was designed for the fortress of Ulloa, is deduced from two assumptions or facts. The first is, the *direction of the vessel and cargo*. The vessel was out at sea. This fact is proved by the captors, for they do not pretend she was near shore; they give the latitude and longitude of the place of capture, viz: "latitude 19° 19′, and longitude 89° 34′; meridian west of Cadiz." All the testimony shows the vessel was out at sea when captured. The American Consul, William Taylor, (Document 9,) states she was ten to fifteen leagues from shore. Her port of destination was *Vera Cruz*, for that port she had cleared at New Orleans, and directly to that port she was steering. She was pursuing her true destined direction, and surely from that fact could no inference be properly drawn that she designed an illicit trade with the Castle of Ulloa. Her conduct was perfectly consistent with her destined intention on leaving the port of New Orleans.

The officers and crew were all examined without any opportunity of conference or concert; and, from their concurring testimony, it will be perceived that not the slightest occasion is furnished for an inference that her destination was different from that declared in her clearance. They all say she was bound to Vera Cruz, and nothing appears to contradict or conflict with what they verify under oath. No comment can add to the force of the testimony on this point. This attempt to in-

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plicate the vessel by her destination is the merest pretext that plunderers ever resorted to.

Is the other ground of inference, that the object of the voyage was to trade with the Castle, more plausible? A small part of the cargo—in regard to the value, a very inconsiderable part—consisted of hogs, chickens, charcoal, and onions; and it is averred by the court that such articles were abundant in Mexican ports, and absolutely unsaleable therein. This is said, or rather assumed, by the court; but there is not a particle of proof to establish the fact. The very proof introduced in behalf of the captors, or the peculators, contradicts it.

They lay before the court the depositions of the supercargo, captain, and crew; on that testimony alone the decree was pronounced. According to the laws of Mexico, the decree should have been pronounced under advice of an auditor, (or lawyer;) but as none could be found at Alvarado, or in the Department, they acted without the presence or advice of such an *indispensable* official, and sought to cure the defect by submitting their proceedings, several weeks after they were concluded, to one whom they afterwards found. He, perceiving, as he well might, that the condemnation was not justified by the proof, instructs the court that it is proper to take the "*confession*" of Cheti, the supercargo, or, in other words, to subject him to a further examination and scrutiny; in the hope (it is presumed) that they might be able to extract from him something more plausible for sustaining their decree. With this direction they complied. They critically examined him, not only as to all the circumstances of this voyage, but in regard to his previous tradings. Cheti's "confession," as it is called, is found on the 20th, 21st, and 22d pages of the record. He confirms all he had said in his deposition, in which he had deposed that he had no Spanish property on board, and that he was in good faith pursuing his voyage to Vera Cruz, and had no intention of trading with the Castle. The questions put to him, when examined before the court, were very searching. One of them, and his answer, are as follows:

"It being asked of him how, under the supposition of being ignorant 'of the continuance of the non-communication of the Castle with the 'town, he ventured to bring a cargo to sell at Vera Cruz, when the 'greater part of the articles of which it is composed were most abun-'dant in the city, and had been shipped from thence to different ports; 'and how, without being sure of the state of it, he did not go to a port like 'this to ascertain the truth, and take information of prices and circum-'stances, which proves that his voyage was not directed to the place 'which he has indicated, but to the Castle, where he might with great 'profit have sold the chickens, hogs, charcoal, and other necessary arti-'cles in that fortress, which are plenty in the city; in consequence, he 'was enjoined to tell the truth. He said that his voyage was decidedly 'for Vera Cruz, in consequence of the news which he has already stated, 'and that the articles mentioned he, being in Campeachy, has seen 'shipped for the aid of Vera Cruz, which was short of provisions, and 'on account of their low price in New Orleans, and he answers. Other 'questions, charges, and recriminations, were made him, in order to dis-'cover the facts which were sought for. He answered to all, that he 'does not know anything more than what he has set forth, which he

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'affirmed and ratified; and, it being read to him, he signed it, with the 'commisioner, and me the notary ad interim of the tribunal, which I 'certify."

Every part of this confession, and of the depositions of the captain and crew, goes in a direct manner to destroy all grounds of inference or even suspicion that the voyage of the schooner Constitution had in view an illicit or any trade with the Castle. It goes further—it shows that the main pretext on which the court place their inference that there was an intention to trade with the Castle—the unsaleableness of the provisions of the cargo in Vera Cruz—was unfounded. He declares that, when in Campeachy, he saw there shipped for Vera Cruz, as being scarce and commanding a high price at the latter place, the very articles—hogs, chickens, charcoal, and onions; which the court say, but do not attempt to prove, were there absolutely unsaleable.

Who ever heard or imagined that it was allowable ground to condemn the cargo of a neutral vessel, trading with one of the belligerents, that the owner was ignorant of or misjudged the state of the market to which he had sent his property; and that the belligerent to which the property was sent had a right to confiscate it upon the sole ground that the other belligerent wanted such articles more than the one to which they were sent? Such a ground of condemnation, if submitted to by neutrals, would destroy all their commerce with countries in a state of war.

The Castle of San Juan de Ulloa was held some three or four years by the Spanish forces, after they were driven out of the other parts of Mexico; and during most of that period there was open and permitted intercourse between it and the city of Vera Cruz. It drew its supplies from the city. Vessels trading with Vera Cruz first went to the Castle and paid duties—eight per cent on the value of their cargoes—and afterwards were received and unladed in the city of Vera Cruz.

If this intercourse was temporarily interrupted, as it appears to have been about the time the Constitution made her voyage, foreign merchants might reasonably expect it would soon be re-established; and regulating their trade upon this expectation, they are not to lose their property if they happen to have miscalculated.

Whether the market at Vera Cruz was good or bad for the articles which composed the cargo of the Constitution, it is enough to say, that by the law of nations in relation to neutral commerce, the trade was fairly open to the citizens of the United States; and the good faith of the voyage cannot be impeached on the ground assumed by the Alvarado court.

Having shown that the pretences on which the court proceeded to condemn the cargo were groundless, enough has been done to establish a claim of indemnity for the loss; yet the undersigned deems it to be his duty to present, in a brief manner, other grounds of objection to the sentence of condemnation in this case.

The vessel was out at sea, and not within the maritime or civil jurisdiction of Mexico. This fact is clearly established. The captors do not pretend that she was near the shore. The American Consul, who interposed his official aid in that character, on seeing the shameful outrage and fraud committed on this property of one of our citizens, felt

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himself constrained, as a matter of official duty, to interfere for its protection. He appears to have thoroughly examined this case, and says, she was "ten to fifteen leagues from land," "out of sight" of land, when captured.

No Mexican municipal laws could affect the case; they could not operate upon the vessel and cargo until she should arrive within the maritime jurisdiction of the Republic, which extends to only *one league from shore*. It is deemed sufficient to barely suggest this point, were there no other ground of objection in the case; this alone would be confidently relied on to sustain the claim.

The Castle was a possession of Spain. On what ground was a direct trade with it denied to the schooner Constitution, or any other neutral vessel, assuming what is alleged by the court, but contrary to what is proved, that the object of the voyage of that vessel was to trade with the Castle? As a neutral nation, our citizens had as good a right to trade with the Spanish possessions as with those of Mexico. The only ground on which the trade of our citizens with the Castle could be interfered with, would be that the Castle was actually invested by a Mexican force—a maritime force. It is true the court say the Castle "was 'in a state of effective and rigorous blockade, declared by the Supreme 'Government in the first article of its decree of the 8th of October, of 'the last year" 1823.

Thus it appears that the blockade resulted from the decree of the Supreme Government; the Castle was blockaded because the Government declared it blockaded. This was nothing more nor less than "*a paper blockade;*" and the doctrine upon that subject is well settled. Neutrals have a perfect right to disregard such constructive blockade. It is not shown or pretended that there was an actual investment of the Castle by force. In one place it is said it was under the guns of the forts on land, but that is not such an actual investment as neutrals are obliged to respect; they do not incur the penalty of running a blockade, when there is not an actual investing force before it.

There is not the slightest evidence or intimation that the Constitution attempted to violate an actual blockade, or that there was in fact any blockading force about or in the vicinity of the Castle. The blockading force was only the decree of the Supreme Government. If, therefore, the Constitution had actually cleared for the Castle, and avowed her intention to trade with it, she would not have been liable to condemnation, because the Castle was not invested by a blockading force. The captors cannot sustain their assumed right to seize neutral property on the way to a belligerent port, without they show an actual and effective blockade, and that the neutral had knowledge thereof; and there is no proof of either. In this case there is a most signal failure to lay any foundation for condemning the Constitution and her cargo. The captors prove no trading or an attempt or a design to trade with an enemy's port; and they prove no actual blockade.

There is still further objection. No notice of a blockade had been promulgated. It will be observed that neither the captain nor the supercargo were asked if they had any knowledge of the blockade of the Castle, but only if they knew whether war existed or hostilities had ceased between Spain and Mexico. Their reply shows that they knew

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of the existence of hostilities, but not of the blockade. The supercargo is asked if he knew that there had been firing upon each other by the city and Castle. His answer is, that he had heard of it, but that just before he sailed he had learned, by a vessel from Tabasco, that there had been an arrangement made between the city and the Castle. The captors carefully avoid asking them about their knowledge of an actual blockade.

It appears, by the deposition of Juan J. Presas, not only that there was actual intercourse between the Castle and the town during most of the time the former was held by the Spaniards, but that the decree of the Supreme Government, declaring the Castle in a state of blockade, was not promulgated any other way than by placards put up in the city of Vera Cruz. This was not a sufficient notice to neutrals; and if there had been an actual blockade, and they had attempted to trade with the Castle, they would not thereby have exposed their property to condemnation. The most that could have been done, without proof of actual notice of the blockade, would be to turn the neutral vessels away from the blockaded place. After notice, or being turned away, if a neutral vessel should attempt to run or violate the blockade, she and her cargo might incur the penalty of condemnation. A knowledge of existing hostilities is not either actual or constructive knowledge of a blockade. On this ground, therefore, if everything that was pretended against the schooner Constitution had been made out, there could have been no rightful condemnation. She could have been interrupted in a trade with the Castle, and warned off, but was not liable to be confiscated.

The law upon this subject is very clear, and need not be referred to, as it is held to be well known. A brief examination of the decree of blockade, of October 8, 1823, will of itself, it is believed, fully dispose of this branch of the case:

The first article of the decree merely states, "The fortress of San Juan de Ulloa is declared to be in a state of blockade;" *but it prescribes no penalty on neutrals for trading with it.* The decree further states, the only force deputed to make the blockade effective is the batteries and artillery at the city of Mexico; *but neither these batteries, nor any other force, naval or military, is authorized to make captures at sea.*

And the only article in the whole decree, which makes *prize* of anything, is the third, which is wholly confined to vessels of all nations coming into Mexican ports with cargoes of "*the products and manufactures of Spain.*" "They shall be considered *good prize.*" And there is no other part of the decree that in the most remote manner refers to American vessels or their cargoes.

It is very certain, therefore, that this decree does not reach this case; and hence, the capture, and condemnation *under it*, is a gross and palpable robbery.

The pretext for condemning the vessel is equally untenable as that set up for condemning the cargo.

She had not, as the captors truly alleged, a certain paper called "a license," required by the twenty-seventh article of the cruising ordinance.

The first position taken in opposition to this ground of condemnation is, that a belligerent has no right to prescribe what papers a neutral ves-

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sel shall be furnished with. If such a right on the part of a belligerent was once conceded, it would lead to the total annihilation of neutral commerce. For a belligerent might in that case require what could not be obtained. There are, however, certain papers that a vessel engaged in a fair trade is presumed always to have, and if found without them, that circumstance is a ground of suspicion, and may have some weight in establishing the charge of being engaged in an illicit trade. The schooner Constitution was not an American-built vessel, and she had not, nor could she have, a register certifying that she was an American-built vessel. She was the property of an American citizen—property which he had a perfect right to hold and use in his foreign commerce. He loses nothing by trading with such a vessel, except the advantages given by our navigation laws to American-built vessels. The Constitution had been for some time engaged in trade with Mexico; she had then recently performed two voyages to Tampico without such register, and no exception had been taken to the sufficiency of her papers. The United States Consul, who is the proper depositary of the papers of our vessels while they remain in a foreign port, is the proper judge of their validity; it is one of the principal duties of his office; and in this case he not only confirmed the sufficiency of her papers to entitle her to the protection of his Government, but he stepped forward voluntarily, as a matter of official duty, in her defence, and in the name of the United States asserted her American character, and then protested against the abuse of it by the captor, and by the tribunal that joined in the depredation upon it.

She had (what was tantamount to a register) a bill of sale or certificate of ownership, which showed she was a foreign bottom, which served to protect her as American property on the ocean and in foreign countries, and entitled her to entry and clearance in all the ports of the United States.

This document sufficiently and satisfactorily accounted for the absence of a *register*.

Is it to be tolerated, that a foreign nation shall prescribe what kind of papers a vessel owned by an American citizen shall have, and for the want of which shall assume the right to condemn it "as good prize?"

What shows conclusively bad faith in the court is, that it suppressed this certificate of ownership, and did not put it in the expediente. But the American Consul, who interfered after the owner had abandoned both the vessel and cargo, and given notice to the Mexican authorities that he would hold their Government responsible for his losses, discovered the fraudulent suppression of the certificate of ownership, and demanded that it should be added to the record. (See the Consul's petition, on page 27 of the Record.)

The Consul's petition, which will be found on pages 23 to 29, is a very able document; it enters fully into the merits of the case, exposes and sweeps away all the unfounded and ridiculous pretences and assumptions on which the decree of condemnation is founded, and shows the rank injustice of the whole transaction. The impurity of the court, which he had witnessed and exposed, might well justify the abandonment of all hope of recovering the property, since it had been already sold, and the distribution ordered among the Mexican officials, in which

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this impure judge was also to participate. Under such circumstances, the whole was very properly abandoned, under protest. The undersigned respectfully asks the particular attention of the Board to this able document. The Consul was on the spot; knew and saw the actual state of things there; and directly contradicts the assumptions of the court, by reference to known and notorious facts.

The certificate of ownership having been drawn reluctantly from the Commandant, who kept it back obviously to give color to the pretext for condemning the vessel, all the essential and requisite papers were furnished, and nothing was left to excuse the iniquitous character of the whole proceedings.

Francois Cheti, an American citizen resident at New Orleans, was the unquestionable owner of the Constitution and her cargo at the time of her capture. His right to indemnity is clearly established. He made a regular transfer of the claim to James W. Zacharie, in his lifetime, who now presents it for allowance by the Board. The document of transfer was mislaid, but the actual transfer is well authenticated; and Cheti's administrator, who was cognizant of the fact at the time, now proves its validity and fairness.

The damages claimed are as follows—being the same as originally filed in the Department of State, which original is filed in the proofs in this case, No. 20, and endorsed, "filed in the Department of State, April 9, 1845," deeming it most proper to now present the claim to the Board as it was then presented to the Government—viz:

[Copy of the claim as originally filed in the Department of State, on the 9th April, 1845.]

Schooner Constitution, formerly "Prince Oscar," Ambrose Cassaigneau, master; James W. Zacharie, assignee of Francois Cheti, claimant.

STATEMENT OF LOSS.

Vessel—		
For the value of the vessel (p. No. 6) - - - -		$6,000.00
For insurance on outward voyage, to cover premium at four per cent., and two and a half per cent. commission -		256.25
		6,256.25
Cargo—		
For the invoice at prime cost (No. 6 A) -	$4,879.82	
For advance thereon, one hundred and fifty per cent. (No. 6) - - - -	7,319.73	
For breaking up the voyage and loss of profit on return cargo (No. 6) - - -	5,000.00	
		17,199.55
Freight—		
For return freight and primage (No. 6) -	$1,575.00	
For insurance on outward freight on $1,575, to cover premium at four per cent., and two and a half per cent. commission - -	77.93	
		1,652.93

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Charges—		
For expenses in defending the property (No. 6)	$1,500.00	
For cost of proof and translations - -	350.00	
		1,850.00
Interest—		
On loss on vessel - - - -	$6,256.25	
" cargo - - - -	17,199.55	
" freight - - - -	1,652.93	
" expenses - - - -	1,500.00	
From July 7, 1824, to April 7, 1845, at six per cent. on - - - -	26,608.73	33,127.79
Total - - - - -		$60,086.52

All which is respectfully submitted to the Board.

JAMES H. CAUSTEN.

WASHINGTON, *January* 27, 1851.

[NOTE. The Board submitted to the counsel a paper, setting forth certain points of law and matters of fact in this case, as to which they were in doubt. This paper is not found on the files of the Board; but an argument on said points (accompanied by additional proof) was thereupon filed, and is now on the files of the Board, whereof the following is a copy.]

THE SCHOONER CONSTITUTION AND CARGO.

The Board having favored the undersigned with a statement of the difficulties which have arisen in their minds in regard to this claim, he is enabled, as he flatters himself, to remove them, principally by additional evidence herewith submitted.

Some distrust is indicated by the Board as to the validity of the claim, from the fact "that it was not brought to the notice of the Government until April, 1845."

That the claimant felt aggrieved by the proceedings of Mexico in this case, and procured the interference of his Government long before the period above mentioned, appears by the following copy of a letter from our Minister in Mexico, Mr. Poinsett, to the Mexican Minister of Foreign Relations:

Mr. Poinsett to Mr. Viesca.

MEXICO, *November* 12, 1829.

The undersigned, Envoy Extraordinary and Minister Plenipotentiary of the United States of America, requests that the most excellent Secretary of State and Relations will cause him to be furnished with a copy of the legal proceedings held at Pueblo, for the trial and condemnation of the American schooner Constitution, as well as those of the first court, from the decision of which the appeal was made to the tribunal at Pueblo.—*Ex. Docs., 2d Sess. 25th Cong., vol.* 12, *p.* 804–5.

This single fact is sufficient to remove the slightest distrust as to the

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fairness of this claim, on the assumed ground of long acquiescence in the alleged wrong. When it appeared that no redress could be obtained from Mexico, and that the policies of insurance did not cover the loss, an appeal was made to our Government. This appeal was made more than twenty-one years ago, and urged through our Minister, whose demand was disregarded, and no answer given to it. The neglect of the claimant to present this case to the mixed Board under the Convention of 1839 seems also to have made an unfavorable impression upon the Board. It appears by the memorials of the claimant in several other cases, (the Rebecca, Scott, Susan, &c.,) that he did not regard the Convention of 1839, or the decisions of the mixed Commission under it, as promising any available relief; and for that reason did not submit either of his several claims to that Board. Additional evidence is now offered, to show that that opinion was freely expressed to other persons at New Orleans at that time, and most probably to the assignor in this case, with whom the claimant was intimately acquainted; he did then believe, and not without plausible reasons, that such awards would not be worth the trouble and expense of getting them.

If in this respect he was in error, it would be hard indeed to allow such a misapprehension to affect injuriously his claim before the Board. Had nothing been done by our Government after the conclusion of the proceedings of the Board under the Convention of 1839, the views taken by Mr. Zacharie as to the value of the awards would have been entirely correct; his main error was, in not anticipating subsequent events. He was wise and sagacious in regard to what would be the state of things, if left where it was reasonable to expect they would be left.

It cannot be that he will be prejudiced in his claim in this case, because he did not foresee an extraordinary course of future comity, not only unprovided for and unexpected, but resulting altogether from a subsequent and unanticipated negotiation, solicited by the Government of Mexico, and for her own convenience and benefit.

The undersigned believes the documents now produced will relieve this case from all embarrassment on this point.

The Board seem to entertain some doubts as to the person who owned the vessel at the time of capture. If they will look at the proofs, these doubts will be entirely removed. Francis Cheti, who is clearly proved to have been at that time an American citizen, was unquestionably the owner of the vessel and cargo, though the latter was shipped and invoiced in the name of his agent, Jacques Zino, (who was also a citizen of the United States,) but "for the account of the said Francois Cheti." (See invoice, and deposition No. 2.)

Among the additional documents herewith filed is the deposition of Henry R. Denis, (No. 1,) who, it will be observed, is an aged and respectable lawyer, having been in practice of the law for forty-five years at New Orleans, and was engaged in the suits upon the policies in this case. This testimony will, it is believed, effectually remove all difficulties that may exist in the mind of the Board in regard to the ownership of the vessel and cargo at the time of the capture. And the deposition of Gallien Preval (No. 4, also herewith filed) establishes the citizenship of said Jacques Zino. And it is not understood that any doubt is raised as to the fact that the present claimant, James W. Zacharie,

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has fairly succeeded to the rights of said Francois Cheti, and is a citizen of the United States.

The foregoing remarks, it is confidently believed, will dispose in a satisfactory manner of all objections to the claim for the Constitution and her cargo, except such as relate to the policies of insurance and the judicial proceedings thereon.

It is now shown by the reports of the case upon the policies, (No. 7, herewith filed,) that nothing was recovered thereon. The record of the prize court in Mexico was produced in the suit on the policies in the Louisiana court, and it appearing by that record that the court decided that the vessel committed an act which was an infringement of the warranty, the insured failed, on the ground that the question of a breach of the warranty was *res judicata*. It could not go beyond the sentence of the Mexican tribunal.

Upon a principle of law which will not be here controverted, the court in Louisiana was required to regard the sentence of the Mexican court as conclusive, and not examinable by it, however unjust and iniquitous that sentence might have been. That the Mexican tribunal had pronounced a definitive decree was the only matter the court in Louisiana could investigate; and it was not within its competence to review the decision. The copy of the case from the Louisiana Reports (2 vol., 533) is herewith filed as No. 7, and it shows that the court considered itself thus restricted. The principle on which the decision was thus made is stated in the marginal note: "The decree of a foreign 'court of admiralty is *res judicata*, in regard to the matters decided 'therein."

But the Board are aware that they are not embarrassed by any such restriction. Theirs is a larger jurisdiction, and the *res judicata* does not circumscribe it. It is their province and their duty to go beyond and behind the decisions of foreign tribunals, to review their proceedings, to rejudge their judgments, and set them at nought if they find these tribunals have not respected neutral rights. Were not this so, neutrals could never have any redress for their wrongs; for the courts of the offending party would furnish a shield of protection. It is not necessary to enforce or enlarge on this point; for the authority of the Board to examine into the proceedings of a foreign tribunal, and disregard its decisions if they find cause for doing so, is clearly and accurately stated by them in the sketch of their opinion prepared in this very case; and no doubt is entertained that they will exercise that authority in regard to the Alvarado court, without being in the least embarrassed by the result of the suits in the Louisiana court on the policies.

Nothing will be here added in regard to the constitution of the Mexican tribunal, or the irregularity of its proceedings, to what was submitted in the former argument; and not much in regard to the iniquitous judgment it pronounced. The records of judicial proceedings do not furnish a decree so entirely unsustainable, in regard to proof or pretext, as that condemning the Constitution and her cargo. The schooner cleared from New Orleans with a legitimate cargo for Vera Cruz, a voyage in all respects free and legal. She was captured by the Mexican armed sloop of war Iquala, while at sea, out of sight of

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land, twelve or fifteen leagues from Vera Cruz, on the ground of suspicion of an intention to trade with the Castle of San Juan de Ulloa. And what, it may be asked, was the ground of that suspicion? Did she clear out for the Castle? No. She cleared for the port of Vera Cruz. Were there any papers found on board, indicating an intention to trade with the Castle? No; none at all. The captain, supercargo, and all the crew, were at once separated, critically and captiously examined, and some of them re-examined; each and all declared that the voyage was to Vera Cruz in good faith, and positively denied all intention to trade with the Castle. All proof failing to make out the slightest ground for the charge of an intended illicit trade, the captors resorted to pretexts of a most flimsy character. They pretended to suspect that she intended to trade with the Castle, from the course she was pursuing on the high sea. Was she deviating from her course to Vera Cruz, the place to which she was cleared? Not at all. No such deviation was pretended or proved; for the course to Vera Cruz and the Castle is the same, and it was absurd to set up such a pretence. If this pretence could prevail, every vessel bound to Vera Cruz, and seized on the high sea, might have been confiscated with impunity by the Mexican authorities. The only other pretext was, that the nature of her cargo indicated an intention to trade with the Castle. By far the largest part of her cargo was unfitted for any market the Castle could afford; but she had some chickens, hogs, and onions, which they alleged the Castle wanted, but with which the city of Vera Cruz was most abundantly supplied. The allegations, both as to the wants of the Castle and the abundant supply in the city, are not proved even by the testimony of the captors. They draw out from the supercargo, in what they call "his confessions," the express proof that he had heard, while at Tabasco, that there was a great scarcity in Vera Cruz of chickens, hogs, and onions, and in consequence of this information he had taken them on board as a part of his cargo of the Constitution. As this point was fully discussed in the former argument, the undersigned would respectfully request the Board to look again at pages 8, 9, 10, and 11, of that document.

In regard to this point, which is in fact the main one in the case, the undersigned boldly ventures the assertion that there was not elicited one single fact that justified the slightest suspicion as to the fairness of the voyage of the Constitution; that there is not a particle of proof to uphold the sentence of the court; but on the contrary, in searching to find something to justify the condemnation, the captors effectually disprove all their pretences, which they had set up for implicating the vessel and her cargo.

If a reasonable suspicion in such a case would justify condemnation, the sentence in this case could not be sustained. But the rule of evidence applicable to the case gives a better security to neutral commerce than the suspicions which rapacity and cupidity can conjure up. The proof required to involve a vessel and cargo in the penalty of confiscation for violating or attempting to violate a blockade must be clear and unequivocal. Not only the actual blockade, (which, as Chancellor Kent says, in his Commentaries, page 144, is a law harsh and severe in its operation against neutrals,) must be established by clear and unequivo-

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cal testimony, but the other acts, implicating neutral vessels, should be proved with like certainty.

Guided, as the undersigned does not doubt the Board will be, by this rule of evidence, he confidently anticipates a result in this case favorable to the rights of the claimants.

The expediente before the Board contains all the proofs which were before the Mexican tribunal, and recorded by it, and its examination will show that the decree (which the Louisiana court was by a rule of law required to regard as conclusive, but the Board is not) was made not only *without evidence*, but in fact *against evidence*, and in flagrant violation of neutral rights.

[JAMES H. CAUSTEN.]

[DECISION OF THE BOARD.]—ZACHARIE, ASSIGNEE OF CHETI. 737.

This claim is for the value of a vessel called the Constitution, and her cargo, taken near the Castle of San Juan de Ulloa, in 1824, by the Mexican vessel of war Iquala, and sent into Alvarado. She was condemned, with her cargo, by a prize court, and on appeal the sentence was affirmed. Cheti was supercargo on the voyage; and in his examination and subsequent confession on oath touching the question before the court, he made oath that he owned the vessel, but the cargo belonged to another. Policies of insurance had been taken out at New Orleans upon the vessel and cargo; and in a suit against the underwriters, the question of interest in the plaintiff, one Jacques Zino, was directly raised. The court decided that there was evidence of interest in Zino in the cargo, but not in the vessel. (See *Zino* vs. *Louisiana Insurance Company*, 2d *Lou. Rep.*)

Francois Cheti afterwards, to wit, on the 6th of March, 1845, made affidavit before the associate judge of the city of New Orleans, that he was sole owner of both vessel and cargo, and that he had assigned his interest in the same to James W. Zacharie, the present claimant. The latter makes oath that he lost the assignment, and he brings forward the acknowledgment of the executor of Cheti, assenting to the assignment.

The Board are not disposed to permit a party to be injured by contradictory statements of a witness made at different times, if such party had an interest that did not depend mainly for its proof upon the oath of such witness. In this case, however, the proof of interest not only depends on the testimony of a witness forsworn, but such interest is derived directly from the witness by assignment. No one could have known so well as Cheti who was the owner of the cargo; and at a time most material, pending a question of interest by a judicial investigation, he swears that another is owner of the cargo. It does not appear that he found out his error until after the lapse of twenty years.

The Board decides, from the evidence in the case, that the claim for the value of the cargo is not valid.

The prize court condemned the vessel because she was sailing without a paper showing her character, and thus, they say, she was violating

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the cruising ordinance of Mexico. How far a State may regulate commerce within her own waters, it is unnecessary to inquire in this case, since the vessel was captured on the high seas; and the right of capture in such cases is, in the absence of treaty stipulations, dependent on the law of nations.

It is not directly settled by the public law what shall be the form of certificate to protect the vessels of neutral nations sailing on the high seas in time of war. A bill of sale, containing a description of the vessel, with proof of citizenship in the owner, may be sufficient; yet most, if not all the nations of Europe, require that vessels shall be provided with registers, passports, sea letters, or some certificate emanating from the State, or by its authority, proving the character of the vessel. The Constitution, a foreign-built vessel, (her former name being changed by the purchaser,) was purchased by Cheti, a citizen of the United States, and by the laws of the United States was not entitled to any certificate from the public, establishing her ownership or character. The bill of sale under which the owner claimed to navigate his vessel did not contain a description of the vessel, except in the name; and though attested, as was also the citizenship of the owner, by a notary public, would seem to justify the detention of the vessel by the captors. We think the case before the prize court admitted further proof for the claimant. In cases analagous, where the question of prize, if determined on the vessel's papers, would have justified her condemnation, the courts have permitted the claimants to make further proofs—as in the case of a vessel sailing from necessity without a register, or its accidental loss; and also where the vessel was visited, and some of her papers necessary for her defence were taken away. But in such cases, the courts have ordered the vessels to be restored, on payment of the captors' expenses. We think, under the circumstances, that the vessel should not have been condemned upon the ground set forth in the judgment of the prize court at Alvarado, and the claimant was therefore entitled to restitution of the property.

The Board decides that the claim for the value of the vessel at Alvarado is a valid claim against Mexico, and the same is accordingly allowed; the amount to be awarded subject to the further order of the Board.

GEORGE EVANS,
CALEB B. SMITH,
ROBERT T. PAINE,
} *Commissioners.*

MARCH 26, 1851.

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NOTE.

In order to a proper understanding of the final decision of the Board (as stated at foot) on the four several cases hereinbefore set forth, it is proper to remark, that some time before the close of the Commission, which would be the 16th of April, 1851, the Board announced that the numerous cases for rehearing (solicited by motion, and granted) would be taken up for decision on the 1st of April, and thence to the close, on the 16th of April, be appropriated expressly to them. By their journal, however, it appears that on the 15th of April, *their last day* of action, they disposed of the mass of business stated at foot hereof; and, although their record states that they "*then proceeded* to consider" each of the cases separately set down for rehearing, and "*after mature* consideration ordered that the said motion be denied," yet it is manifest that the examination and decision of such a mass of business was utterly impracticable within the single day given to it; and it is no less manifest, therefore, that *even the reading* of such arguments and additional proof *was wholly dispensed with and disregarded.*

Extracts from the Journal of the Board.

"TUESDAY, *April* 15, 1851.

The Board met pursuant to adjournment; all the members present.

The Board then proceeded to ascertain and determine the amounts to be awarded to the several claimants respectively, whose claims have been heretofore allowed—

Ordered, That interest at the rate of five per cent. per annum be computed on all claims which have been allowed, for the property lost, or contracts unfulfilled, unless a different rate of interest was stipulated in such contracts, from the origin of the claim to the 16th of April, 1851, when the Commission will expire; and thereupon the Board awarded to John Wilkins, &c."—and so also in 196 cases particularly designated therein.

"The Board then proceeded to the consideration of the motion filed on the 14th instant, for a re-examination of the claim of E. H. Saulnier, heretofore rejected; and thereupon came to an opinion—

Ordered, That the said motion be denied.

The Board then proceeded to consider the motion submitted on the 4th of March last, for a re-examination of the claim of Edmund J. Forestal and Cucullu's, administrators, for the seizure of the schooner Felix; and, after mature consideration of the same,

Ordered, That the said motion be denied."

Then follows ten like decisions. And then follows:

"The Board then proceeded to consider the motion heretofore filed for a re-examination of the claim of James W. Zacharie, for the loss of the schooner Rebecca and cargo; and, after mature consideration of the same,

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Ordered, That the said motion be denied.

The Board then proceeded to consider the motion filed on the 19th of March last, for a re-examination of the claim of James W. Zacharie, for the seizure of the schooner Constitution; and, after mature deliberation of the same,

Ordered, That the said motion be denied.

The Board then proceeded to consider the motion filed on the 27th day of March last, for a re-examination of the claims of James W. Zacharie, for the seizure of the schooner Scott and the schooner Susan, heretofore rejected by the Board; and, after mature consideration of the same,

Ordered, That the said motion be denied.

The Board then proceeded"—on a new claim, viz: the memorial and proofs of Elisha H. Saulnier, "filed this day." The memorial was "received, evidence examined, and claim for $14,950 allowed."

Then follows three additional cases in which the motion for reconsideration "is denied;" and it is remarkable that each and every case of this description shared the same fate—all were summarily "denied."

Then follows the decisions of the Board on "colonization contracts," whereof seven were rejected.

Then follows the decisions of the Board on three "land company" claims, which were allowed.

The Board then proceeded to record a resolution in favor of their messenger, Wm. Ryan.

The Board then proceeded to consider two additional claims for re-examination, which resulted as the former ones—

"*Ordered*, That the said motion be denied."

"The Board having finished all the business before it, then adjourned without day.

CHARLES W. DAVIS, *Secretary*."

☞ And *immediately* thereafter the Commissioners and their clerk left the city of Washington.

After the appointment of the Select Committee of the Senate to examine the proceedings of said Board, one of the members of the Board, Mr. Smith, sent two several messages, by a mutual friend, to the counsel of Mr. Zacharie, and afterwards repeated to the counsel in person, "that he was always of opinion that Mr. Zacharie's four cases [those hereinbefore described] ought to have been allowed by the Board." He had, nevertheless, signed the adverse decisions of the Board in each and all of the said four cases, as will be seen on pages 9, 28, 39, and 84.

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UNITED STATES OF AMERICA.

DEPARTMENT OF STATE.

To all to whom these presents shall come, greeting:

I CERTIFY, That with the exception of the Introduction, the Notes, and the closing remarks after the adjournment of the Board, the papers hereunto annexed are a true copy, transcribed from and carefully collated with the original papers on file in this Department.

SEAL.

IN TESTIMONY WHEREOF, I, Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

Done at the City of Washington, this twenty-fifth day of January, A. D. 1853, and of the Independence of the United States of America the seventy-seventh.

EDWARD EVERETT.

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